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ABSTRACT

These papers from an International Committee on Family Research (CFR) seminar explore seven themes, three of which are presented in Part 2. Work, economic policies, and welfare consequences and responsibilities (Theme 5) are discussed in Margrit Eichler's "The Familism-Individualism Flip-Flop and Its Implications for Economic and Social Welfare Policies" and in Andrew Burbidge and Frank Maas' "Throwing Out the Baby...the Need To Assess Unintended Outcomes of Tax Transfer Options." Intergenerational exchange, aging trends, and the public/private support dimensions (Theme 6) are discussed in "Managing Interdependence: Family Development, Policy, and the Care System in an Aging Society" by Karen Altergott, in "Family Support Networks and Public Responsibility" by Pete D'Abbs, and in "Social Change and Support of the Australian Aged: Individual, Family, and Government Responsibilities" by Hal Kendig. Finally, legal regulation of the family and the effect of changes in the family (Theme 7) are explored by Jacques Commaille, Margaret Harrison, and John Eekelaar, respectively, in "From a Socio-Legal Approach to Divorce to a Sociology of Socio-Legal Regulation as Applied to the Family," "The Changing Role of Law in Marital Breakdown," and "Legal Systems and Families." (RH)

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KEY PAPERS

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2

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The familism-individualism flip-flop and its implications for economic and social welfare policies

by MARGRIT EICHLER

Introduction

At present, there is an increasing concern with examining social policies as they relate to families. It seems that in many industrialized countries social policies are experienced as being "out of whack" with reality. This is probably due to the significant changes which have taken place in the structure of families in the last two or three decades, but particularly in the last decade. I would identify the two most important characteristics for social policy purposes of contemporary families in highly industrialized countries as (1) a significant discrepancy between household and family memberships and (2) the co-existence of one-earner and two-earner families.

It is the major thesis of this paper that in a situation in which, first, the family is taken as the administrative unit for economic and social welfare policies, while we are, second, faced with a diversity of families with respect to their composition and economic structure, and where, third, the family is seen as the major economic support structure for its members, we will necessarily run into administrative and social justice problems which may, in extreme cases, even produce the effects that specific policies were aimed to alleviate the negative consequences of. I have called this phenomenon the familism-individualism flip-flop,[1] since it results in discriminatory policies against some families because it is based on the family

as the administrative unit, not in spite of it.

In order to explore this thesis, the paper will provide an extremely brief[2] overview of the two identified crucial characteristics of contemporary families in highly industrialized countries.[3] Significant discrepancies in household and family memberships will be traced by considering illegitimacy rates and divorce rates, since available statistics do not usually reflect discrepancies between household and family memberships. The hidder nature of this phenomenon will be discussed. The co-existence of two-earner and one-earner families will be approached by looking at labour force participation rates of women.

The second part of the paper will explore the consequences of these two characteristics for economic and welfare policies, by identifying and elaborating implicit models of the family underlying various policies. In particular, (1) the model of the patriarchal family and (2) the model of the equalitarian family will be identified as two important implicit models underlying economic and social welfare policies. The paper will then discuss problems specific to the patriarchal model as a basis for social policy,[4] and after that problems specific to the equalitarian model of the family. Following this, problems shared by both models as a basis for social policy will be discussed and (3) an alternative model of the family, the emancipated model of the family, will be elaborated and suggested as a more appropriate model for economic and social welfare policies today. Finally, implications of adopting such a model for famil policy in general will be discussed.

In this first part, the paper will draw on some international data, while the second part will use Canada as an example. However, the major intent of the paper is not a discussion of specific changes or specific policies, but rather the identification of some problems (and the suggestion of a possible solution to the identified dilemma) in principle.

I. CHARACTERISTICS OF FAMILIES IN HIGHLY INDUSTRIALIZED COUNTRIES

(1) Discrepancies between Household and Family Memberships

Until recently, there seems to have been a prevailing assumption that household and family memberships are congruent for the vast majority of people. Indeed, statistical data collection methods which decree that a person can only be a family member if he or she is also a household member are premissed on this assumption (see Williams, 1984). This I have elsewhere characterized as part of a monolithic bias in the family literature.[5] Even today, much of our terminology suggests that this assumption is still operative at an unconscious level. Statistics tend to equate husband-wife families with dependent children with two-parent families, and households which consist of one parent with dependent children are commonly referred to as one-parent families. Both practises hide real discrepancies between household and family memberships, since spousal relationships and parental relationships often do not overlap due to divorce, remarriage, and births outside of marriage. Such terminology thus hides a very important aspect of potential non-congruity between family and household memberships.

Given these difficulties, we have no accurate measures of the degree of discrepancies in household-family memberships. However, U.S. statistics suggest that about 45% of the children born in the mid-seventies will live at some point before they reach the age of 18 years in a one-parent household. (U.S. Department of Commerce, 1979:3) This proportion has been estimated to reach fifty percent in 1990. (Glick, 1979:176) A Canadian estimate, using some rather rough indicators and taking the household rather than the child as the unit of analysis estimates that more than 50 percent of all Canadian households involve some discrepancy in family/household memberships for at least one person involved. However, this estimate includes discrepancies occasioned by adoption, which need properly to be excluded from our considerations here. (Eichler, 1983:237-238) The accuracy of these estimates as indicators of household/family discrepancies is not really at issue here - whether we are dealing with a 30% discrepancy or a higher than 50% discrepancy does not alter the fact that in either case discrepancies between family and household memberships are an important aspect of familial structures today and must therefore be taken seriously.

At the international level, no direct measures of family/household membership discrepancies exist, but two proxy variables, namely illegitimacy rates and divorce rates, can give some indication of the degree to which this phenomenon is likely to exist in different countries.

If we look at illegitimacy rates, we can note that around 1960 illegitimacy rates started to increase in the majority of those countries which have been identified as industrial market economies

and nonmarket industrial economies, respectively[6] (see appendix 1).

If we consider divorce rates, we find likewise a very marked increase in these rates over time. Although there are great differences between countries, as there are for illegitimacy rates, with the exception of Italy all divorce rates around 1980 were higher than 1.00, up to a high of 5.30 for the United States (see appendix 2).

Although both illegitimacy rates and divorce rates are very crude indicators of the degree of household/family discrepancies, it seems safe to conclude that there is no highly industrialized country with the possible exception of Italy in which we would not expect to find a significant degree of discrepancy between household and family memberships, although the degree to which this statement applies varies markedly from country to country. One would assume that the higher the illegitimacy rate and the divorce rate, the higher the family/household membership discrepancy.[7]

Given the trends in the past twenty years, it seems reasonable to expect that this phenomenon will not decrease in the near future and will probably increase. We can therefore take the existence of a significant degree of discrepancy in household/family memberships in the majority of highly industrialized countries as given. Although it would be very desirable to have some accurate measures rather than these rough observations of trends used here, the prevalence of this phenomenon does not really change its importance for policy considerations, and therefore further estimates will not be pursued here. This remains an interesting task for another occasion.

So far, we have only looked at the structure of modern families in terms of their composition and with respect to the residential

and procreative dimensions of familial interactions. This limited view, however, does allow us to conclude that it is hopelessly inadequate to take a monolithic approach to contemporary families by assuming congruence between household and family memberships for all families. Since such an approach does not reflect the reality of all modern families, it is not a reasonable basis for policies.

For economic and social welfare policies, the economic dimension is, of course, extremely important. Here again, we find diversity rather than uniformity, with rather important consequences for economic and social welfare policies. The most important aspect of this diversity is displayed in the co-existence of one-earner and two-earner families, with the one-earner families being subdivided into husband-wife families and one-parent households. We will consider this issue next.

(2) One-earner and Two-earner Families

We can note internationally a steady influx of women into the labour force in the past two decades. Of course, changes indicated by some of the labour force participation rates may be somewhat misleading, since women have always been involved in productive labour without this being necessarily reflected in official statistics. The case of the farm wife (i.e., a female farmer) is a case in point. To some degree, then, increased labour force participation of women represents the greater likelihood of women to engage in productive labour for which they are paid, rather than simply engaged in without pay.

Of course, not all women are wives and/or mothers, not all wives are mothers, and not all mothers are wives. Yet in our context wives

and mothers are of more interest than single childless women. Unfortunately, statistics about the labour force participation of wives is scattered and that about mothers so spotty as to be useless for international comparisons. A reasonable proxy variable is to look at labour force participation of women by age. If we assume that by age 25 to 29 the vast majority of women is married and that the years of 25-40 are the prime years for giving birth and raising children, then looking at the labour force participation of women aged 25 to 29 and 30 to 44 will give us a reasonable approximation of the proportion of wives and mothers who are in the paid labour force. Here we find that for the vast majority of countries, the available figures indicate a mixed pattern for women, of whom we can assume the large majority to be married (see appendix 3).[8] Since most of the men are in the labour force, we can therefore assume that in the majority of countries we find some significant mix of one-earner and two-earner families.[9]

Overall, then, we can note that contemporary families in highly industrialized countries are characterized by:

(a) a significant degree of discrepancy between household and family memberships, which results in

(b) economic obligations and entitlements which cross-cut households (whether or not these obligations are always honored), and that

(c) there is a significant mix of income generating patterns, the most important of which is the existence of both one-earner and two-earner families, while, lastly,

(d) one-earner families take the form of both husband-wife families and one-parent households.

This, then, constitutes the contemporary background against which we have to assess policies oriented towards families.

II. CONSEQUENCES OF DIVERSITY IN FAMILIAL STRUCTURES FOR ECONOMIC AND SOCIAL WELFARE POLICIES

So far, we have looked at characteristics of families as we find them at present. Assumptions about such characteristics do not, however, seem to underlie current policies, and this is part of the problem identified at the beginning of the paper that policies seem to be "out of whack" with contemporary social reality. The problem is, however, not easily identified. Only rarely do we find explicit statements about the structure of contemporary families in a social policy context. This leaves us, when trying to connect social policies with familial structures, with the task of drawing out the implicit model of the family which underlies specific policies by critically examining the policies themselves and asking: with reference to what model of the family can one explain this particular policy? The following discussion, therefore, is an attempt to make implicit models of the family explicit by looking at the internal logic of different policies with respect to assumptions about families inherent in them.

Traditionally, families have been thought of, in western societies, as the "building blocks" of society, as the smallest unit with which society has to deal, and as an institution that is important to society and that must consequently be "protected". One of the effects of this general attitude is the conviction that the state should not interfere in families, or, if this becomes unavoidable, interfere only to the least degree possible. Translated into social policies, this general view of families tends to have two

consequences: for purposes of social welfare policy, the family is supposed to be able to care for its own members, and help, if any help is rendered, is given to the family as a whole. The family is therefore treated as the smallest administrative unit, rather than the individual. In other words, we find two principles often underlying social policies: the principle of a support obligation of family members for each other, and the principle of the family as the appropriate unit of administration for most, if not all, social policies. In Canada, neither principle is consistently underlying current policies, but nevertheless, both of them can be traced in fiscal, economic, and welfare policies.

The support principle and the family-as-administrative-unit principle can, and have been, applied in different social contexts. With respect to policies which relate to families, we can at present identify two predominant models, both of which can be detected in existing economic and social welfare policies, namely (1) the patriarchal model of the family and (2) the equalitarian model of the family.

If we conceive of these two family models as ideal types in the Weberian sense, a patriarchal family model can be characterized by the following eight characteristics:

(1) Household and family are treated as congruent.

(2) As a consequence, a husband is equated with a father, and a wife is equated with a mother.[10]

(3) The family is treated as the administrative unit.

(4) The father/husband is seen as responsible for the economic well-being of the family.

(5) The wife/mother is seen as responsible for the household

and personal care of family members especially childcare.

(6) Conversely, the father/husband is not seen as responsible for the household and personal care of family members, especially childcare, and

(7) the wife/mother is not responsible for the economic well-being of the family.

(8) Society may give some support to the man who supports his dependents (wife and/or children), but is not responsible for the economic well-being of the family where there is a husband present and is not responsible for the household and personal care of family members, especially childcare, when there is a wife present.

This model of the family is premissed on the notion of sex inequality which expresses itself in a rather strict division of labour between husbands and wives. Individual female economic dependency on one man (the husband or father) is a constituent element of this model of the family. Since the wife (and mother) is conceived of as the economic dependent of her husband, her unpaid work in the household, including childcare, is therefore seen as economically valueless.[11] If either spouse ceases to perform his or her prescribed function (e.g., the husband loses his job or deserts the family, the wife falls ill and is institutionalized) the state is likely to take over the function no longer carried out by one of the spouses: it pays support for mothers with dependent children, or pays the husband for replacement services of the incapacitated wife.

By contrast, the equalitarian model of the family can be characterized by the following six characteristics:

(1) Household and family are treated as congruent.

(2) As a consequence, a husband is equated with a father, and a wife with a mother.

(3) The family is treated as the administrative unit.

(4) Both husband and wife are seen as responsible for their own support as well as that of the other.

(5) Both father and mother are seen as responsible for the household and personal care of family members, expecially childcare.

(6) Society may give some support to families but is in principle not responsible for either the economic well-being of the family nor for the personal care of family members, especially childcare, when there is either a husband or wife (or mother or father) present.

As a country, Canada is moving slowly (and inconsistently) towards an equalitarian model of the family in its social policies. All provincial family laws have been amended starting in 1978 in the direction of assigning equal responsibility for economic well-being and household work and childcare to both husbands and wives. This model, where it is used, has two most interesting consequences: for one, it makes the economic value of unpaid labour performed within the home somewhat more visible. When both spouses are seen as responsible for their own economic welfare, but the couple truly decide (rather than simply assume) that it is preferable for one of them to stay at home, than replacement values of either housework or of the foregone potential financial contribution by the stay-at-home spouse come into play. The other consequence is implied in

characteristics 5 and 6: if a husband/father is responsible for both the financial well-being of the family as well as for the housework and care of its members, and if the same applies to a wife/mother, then the state's obligation which is contained in the patriarchal model of the family to take over the role of the absent spouse tends to disappear. Unfortunately, this seems to be brought into play predominantly to argue that single mothers should go out and earn money. In other words, this model can be utilized to diminish state support for families in need, since presumably both parents (or spouses) can fulfill both sets of roles. The model does not, however, imply that in the case of a husband/wife family both spouses need to hold a paying job, instead, it implies that the contribution of the spouse at home is economically valuable since otherwise those services would have to be purchased.

Certainly, this model has some strong attractions over the patriarchal model of the family, insofar as it is based on the notion of sex equality rather than female dependence, and insofar as it is somewhat more in line with current social reality, since the majority of wives are at present in the labour force.

Nevertheless, some extremely important problems remain. Looking at both models of the family together, we can note two sets of problems: the first set is specific to each model, the second set is shared by both of them. In the following, we will first consider those problems which are specific to each model, and then consider shared problems.

(1) Problems Associated with the Use of the Patriarchal Family Model as a Basis for Social Policy

The major problem associated with this model as a basis for

social policy is that it is premissed on notions of female dependency and thereby helps maintain such dependency. Examples of such policies, which currently still exist in Canada, include social welfare policies which disentitle a woman with children on family benefits from benefits because she is judged to live together with a man. In 1980, there were several cases of women who were jailed in Ontario because they claimed family benefits for themselves and their children, but were later on judged to have been living together with a man (see Eichler, 1984). There was no doubt that the benefits were used for their proper purpose, namely to provide the basic necessities of life for the woman and children involved. Nor was there any doubt that the men involved had not supported the woman and children - they were however, supposed to have supported them, under the assumption that it is the husband/father's responsibility to support his wife and her children, and under the assumption that a husband (common-law or legal) equals a father (true in one of the cases involved, not in the two others). Nor have things changed since 1980.

On January 19, 1984, a major Canadian newspaper, (The Toronto Star) reported on its first page: "Mom's welfare fraud blamed on 'system'". The story concerned a welfare mother who 'defrauded welfare of more than $37,000 because she was afraid of losing her children". She drew welfare over ten years and received about $270 a month to support herself and her three children. Her former husband never paid child support, despite a court order, which added up to arrears of $19,500. Warrants for his arrest were never executed. The woman had been told that if she had no way of supporting her children, she could lose them to the Children's Aid

Society. The reason she was judged to have defrauded welfare was that during the period in question she was in fact living together with a man, rather than as a single woman. There is no suggestion that this man was able or willing to support those children who are not his children, and had she not lived with the man, she would have been entitled to every penny she received.

This is a clear case of a policy premissed on the patriarchal model of the family: the common-law husband is treated as the children's father (which he is not) in terms of support obligations, the family is seen as the administrative unit rather than the individual, and the household is equated with the family, as the rather interesting follow-up to the story suggests: a few days after the initial story the newspaper reported that it had managed in days to do what the state had been unable to do in years, namely to locate the missing father who had never paid a cent in child support (Moore and Stefaniuk, 1984).

The judge ordered her to repay the money minus the amount owed her by her husband over a period of six years. However, she only earns $200 a week as a manual labourer. Supporting three children and herself, how can she repay $18,000 on that salary? The woman argues that "The system sold us out... You took my children's rights. You didn't protect them. If they were in Children's Aid, you'd be paying $550 a month to support them." (Toronto Star, Jan. 19, 1984, p. 1) Her analysis is correct.

Other examples of policies which are derived from a patriarchal model of the family include welfare policies which restrict family benefits to single mothers and children (as still is the case in

some Canadian provinces although no longer all of them) but to which single fathers and children are not entitled.

With respect to economic policies, all policies which intentionally or unintentionally favour male over female wage earners conform to a patriarchal model of the family. The distinction into "primary" and "secondary earner", for instance, is an expression of an assumption of differential economic responsibilities within families. This becomes even more obvious when looking at policies aimed at "dependents".

For instance, in a recent case brought before the Canadian Human Rights Commission, two Nova Scotia women taking adult vocational training under a Canada Employment and Immigration program

> were not paid the training allowance normally paid to persons supporting dependents because CEIC regulations were interpreted to mean that their husbands were supporting the household. In fact neither man was regularly employed and both women considered that they were supporting their families while taking the training courses. After conciliation, CEIC revised its interpretation of the regulation involved. A family member will be considered to be supporting the household if he or she has the largest income during the last 12 months and is fully employed during the training period in question. Because neither complainant's husband meets both of these criteria, the women have been accepted as supporting their families. As part of the settlement, one of the complainants received additional benefits. The other complainant's allowance had already been adjusted while she was still on the course.
>
> (Human Rights Commission, 1981:6-7)

To give one last example from the area of fiscal policy, the marital exemption which allows an income earning spouse to claim his or her non-income earning spouse as a dependent and thereby receive a reduction in taxes in effect translates into a tax bonus for husbands with wives who are housewives.

Problems with using this model as a basis for social policy

formulation are manifold, but the most important one is that the assumption of female dependency which underlies this model is not only outdated but would in many instances also be unconstitutional, now that Canada has enshrined the principle of sex equality into its constitution.[12] The whole notion of differential responsibilities for husbands and wives, mothers and fathers is highly restrictive and, where it is applied, continues to generate the dependence of women on a husband/father, thus denying equal opportunity for women and resulting in poverty in old age at the latest.

Other types of problems stemming from the use of a patriarchal model of the family come into play in the case of divorce. According to the patriarchal model of the family, the man is responsible for the economic well-being of the family. This being the case, a logical extension of this model is that such responsibility continues beyond the duration of the marriage, for the ex-wives in the form of alimony, for the children in the form of child support. A reasonable judicial stance derived from such a model would be that if a woman was a full-time housewife and mother she is entitled to continue as a full-time housewife and mother after the divorce, and be supported in this by her ex-husband. Now let us assume that the man remarries, as is usually the case. Does his new wife also have the right to be supported by him? Likely the question will not become an issue until the man and his new wife have a child together. Assuming that the man would not have enough income to totally support two families (as would usually be the case) we have two competing and incompatible sets of demands on his income. If the support obligation towards his first family is lowered because of his changed circumstances, then his first wife and his first set of children are penalized

although nothing in their situation has changed, i.e., the first wife will have to bear the costs of actions involving the second wife. On the other hand, if the support payments to the first family remain the same (and presumably his income remains the same) then the second wife may be forced to have a job so that the first wife can be a housewife. Given that in Canada the likelihood of a marriage to end in divorce is around 40% and that most divorced men remarry, this is clearly an important problem.

Overall, the patriarchal model of the family is clearly not an acceptable basis for social policies, due to its inherent assumptions about female dependency, asymmetry of female-male responsibilities and rights, and the increasing number of households in which family and household memberships are non-congruent, leading to competing and irreconcilable demands on a man's income.

We will now turn to the model of the equalitarian family and examine its utility as a basis for social policy.

(2) Problems Associated with the Use of the Equalitarian Family Model for Social Policy Purposes

In Canada, we can note some inconsistent movement towards the adoption of the equalitarian model, which coincides (certainly not accidentally) with the greatly increased labour force participation of women. This partial shift, and where it has and has not occurred, is in itself a very significant development which should be explored in its own right in more detail, in relation to the concomitant four changes in familial structures as noted above under (a) to (d). However, here we will focus on problems associated with the use of this model as a basis for social policy.

The first set of problems derives from the fact that society is currently in a transitional stage concerning sex roles, while the second set derives from the continuing monolithic assumptions contained in this model and shared with the patriarchal model of the family.

As far as the first set of problems is concerned, Canadian society is slowly moving from an overall patriarchal structure to one which is premissed on the notion of sex equality, but this transition is by no means complete. In a situation in which women are, in fact, unequal with respect to, for instance, access to economic means, it may be highly unfair to treat them as if they were equal. For example, to argue that a woman who has been married for 30 years and who has been a housewife during all that time should after a divorce support herself is patently injust because she is no longer young, has no relevant job experience, etc. This set of problems can be resolved by creating policies which in the long term are premissed on the notion of sex equality but which in the short term recognize and make allowance for historically determined differences. (For an exposition on this issue, see Eichler, 1983:129-134)

The second set of problems is similar to those encountered in the patriarchal model of the family, and not astonishingly so, since they derive from the same source. Both models share three characteristics, namely that household and family are assumed to be congruent, spouses and parents are equated, and the family is treated as the smallest unit of administration.

Let us come back to the previously discussed case of an unmarried woman with dependent children on family benefits. If the law is

adjusted so that both fathers and mothers become eligible to these benefits, and that both female as well as male partners become liable for support payments (as is presently the case in Ontario), the law conforms to the equalitarian model of the family rather than to the patriarchal model. However, the problems associated with this policy remain, they have merely been extended to males as well. In effect, people on family benefits are prohibited from establishing a new husband-wife family unless they find a partner who is willing to assume not only financial responsibility for the person on benefits but also for her or his children. Given that under the new family law in Ontario a spouse, including a common-law spouse, may acquire a life-long obligation towards a dependent child simply because the child has been treated as a dependent child at some point in time, whether or not there is a biological relationship, this constitutes a tremendous potential financial burden on the solvent spouse. Assuming that most welfare agencies hold the ideal of the husband-wife family as preferable to a one-parent household for the children, here again then we run into the operation of the familism-individualism flip-flop: welfare payments for one-parent households are meant to alleviate the special circumstances of these types of households, but the way the policies are written, they may actively discourage a move from a one-parent household to a husband-wife household.

However, let us consider the alternative. Let us assume that a mother or father would continue to be eligible to her or his benefits even if (s)he in effect establishes a common-law relationship with a person of the other sex, or even if (s)he marries him or her legally. Now let us assume that this person has a decent job

and income, of the same type as a neighbor who also has two children, but whose spouse would not be eligible to family benefits because their children would be the biological children of both. In such a situation, the state would then support one type of family and not another in similar circumstances, thus potentially contributing to marriage break-ups because it would be financially preferable for a woman to live with a man who is not the father of her children, and for a man to live with a woman who is not the mother of his children. Clearly, this is not a very equitable way to approach the issue either.

If we turn to fiscal policy, the marital exemption is a tax benefit which is financed out of general tax revenues, and therefore paid for by all tax payers, including the majority of Canadian wives and husbands who are in the labour force, who therefore earn an income and pay tax on it. The benefit is received primarily by husbands who have a dependent wife, and who presumably receive household services from her. Therefore, male tax payers whose wife is <u>not</u> a housewife and who therefore presumably have to do a bit more of the housework themselves as well as married women with jobs who remain primarily responsible - in practice if not in law - for household work, subsidize with their pay men who most likely <u>do</u> receive household services from their wives. This is hardly equitable.

On the other hand, mothers with paying jobs can deduct up to $2,000 per year of childcare costs per child under certain circumstances, which constitutes a substantial tax bonus which is available only to two-earner couples or income-earning one-parent households but not to one-earner households in which the mother

looks after her children. This is another example of the familism-individualism flip-flop, since many people still consider a mother looking after her children on a full-time basis as an ideal child-care arrangement - nevertheless, this type of family may receive less public support than the family in which the mother holds a paying job, although they may be in as much need.

Overall, then, while the equalitarian model is more acceptable than the patriarchal model of the family as a basis for social policy, it does not overcome the problem that policies which are geared towards families of a particular type will, in a situation where we deal with diversity in familial structures, inevitably discriminate against some families, for as long as the basic unit of administration remains the family rather than the individual.

(3) The Familism-Individualism Flip-Flop

Earlier, the familism-individualism flip-flop was defined as a tendency of policies which take the family as a unit of administration and assign a support function to families to result, in cases where there is a diversity of familial styles, necessarily in administrative and social justice problems some of which may even produce the effects that specific policies were aimed to alleviate the negative consequences of. The case of welfare legislation which is meant to alleviate the problem of one-parent households but which, due to its implementation, may actually prevent these same one-parent households from becoming husband-wife families, is merely a particularly poignant example of this tendency.

The roots of the problem lie in the assumption that families have the obligation to both economically support their members as

well as provide the physical and emotional care for members in need of care and the conflicting ideal of sex equality. Within families, some unpaid work is carried out that is crucial, socially necessary, and that takes time which, if devoted to these tasks, cannot be used for earning money: namely care of dependent children and of adults who are unable to care for themselves because of illness or handicap. In the patriarchal model of the family, this work was traditionally carried out by women, without pay, and was therefore seen as being economically unimportant, valueless and unproblematic, since the woman was conceptualised as a dependent, not an economic contributor. In the equalitarian model, the need for this work still persists - after all, somebody has to look after the children and after the sick - but since the woman is now presumed to be also engaged in economically valuable tasks, i.e., earn money, if she instead uses her time to look after children and/or adult people in need of care, it becomes obvious that this task is costing money in the form of salary foregone by the woman. Alternatively, if parents hire somebody to look after their children, they will have to pay for a service that formerly seemed to be available for free - although this seeming free availability was nothing but a side effect of ignoring women's socially useful work performed within the home.

This, then points out the essential paradox: if women are supposed to be responsibile for their own economic well-being (and potentially for that of others, as well) somebody else will have to take over those socially useful tasks that women have traditionally performed (and continue to perform) within the home. Alternatively, unless someone else takes over these socially useful tasks, women

are not free to earn money and therefore to look after their own (and potentially others') economic well-being, unless they are single and without children.

This is the nature of the hidden sexism in the equalitarian model of the family, which at a formalistic level is non-sexist, but which structurally remains sexist by imposing an impossible, in principle unsolvable task on women; and on men when these same expectations are extended to them.

In other words, if women are to take their share in economically supporting themselves and the family, then the tasks of raising children and looking after adults in need of care must also be shared between society and the parents in the case of children, and rest solely with society in the case of adults in need of care.

This is hardly a new insight, since the Report of the Royal Commission on the Status of Women in Canada (1970:xii) already stated at its outset that "...the care of children is a responsibility to be shared by the mother, the father and society. Unless this shared responsibility is acknowledged and assumed, women cannot be accorded true equality."

The support function of the family must therefore be reconsidered and reformulated. Failing such a reformulation of the support function of the family in principle, we will end up with policies which try to provide support in cases in which families are, for some reason or other, considered to be deficient in their structure, and thereby deprive families which are for reasons of structure considered to be complete rather than deficient of equivalent support. This is simply another way of stating the paradox

of the familism-individualism flip-flop: defining need of support from the state in terms of structural characteristics (whether there is, or is not, a husband in the family, for instance) will discriminate against families in need of economic support but not showing these structural characteristics (e.g., welfare recipients who are living together with a person who is not able and/or willing to support their children) and thus even prevent such families (e.g., one-parent households) to move towards a family which is often considered preferable (namely a husband-wife family).

This is linked with the definition of the appropriate unit of administration: in cases in which the family is taken as the unit of administration, people can be (and are being) disentitled from public support because of their family status, once more resulting in discrimination against certain types of families.

It seems therefore appropriate to develop another model of the family which would allow for sex equality without generating instances of the familism-individualism flip-flop. I have called this model the emancipated model of the family.

III. THE EMANCIPATED MODEL OF THE FAMILY

The familism-individualism flip-flop occurs when policies, by treating people administratively as members of families rather than as individuals, inadvertently or advertently discriminate against some types of families. This must happen inevitably when we are dealing with a mix of families as currently exists in most highly industrialized countries, and certainly in Canada.

The response to this problem would be to treat people administratively for the purposes of economic and social welfare policies as individuals. This implies that if a mother is entitled to child support on the basis of her income, she would maintain her entitlement to such support irrespective of whether or not she was living together (legally or otherwise) with a man. However, in order to also avoid that parents who are not living with their biological children are receiving more support than parents who do live with their children, equal child support would have to be provided to nuclear families. Overall, a model of the emancipated adult would exhibit the following three characteristics:

(1) Every adult is considered responsible for his or her own economic well-being. If a person is unable to support him or herself, the support obligation would shift to the state, not to a family member.

(2) When an adult needs care, be it for a permanent or temporary illness or handicap (including senility), it is the responsibility of the state (not of a family member) to pay for the cost of such care.

(3) The cost for raising children is shared by father, mother, and the state, irrespective of the marital status of the parents.

These three principles are sufficient as a basis for creating social and economic policies which will avoid the overt sexist bias of the patriarchal family model and the familism-individualism flip-flop inherent in both the patriarchal and equalitarian models of the family.

By implication, of course, such a model of the family would not assume congruence of household and family membership, would not take the family as the smallest administrative unit but instead the individual, would not assume that a spouse (common-law or legal) necessarily equals a parent and that a non-spouse cannot be a parent. It would furthermore be premissed on the notion of sex equality and on the notion of societal responsibility for people in need of care, that is, dependent children and handicapped or sick adults.

In what way could such a policy still be called a family policy? With the same right with which family allowances are presently seen as part of a family-oriented policy. The family allowance system in Canada is already premissed on the principles detailed above: it recognizes a societal contribution to be made to the care of children to which the children as individuals are entitled: they maintain the right to this benefit no matter who raises them in what type of familial structure, one-parent, two-parent, guardian, or whatever. As children shift from one adult responsible for them to another, their family benefits follow them.

However, the societal contribution made through family allowances is tiny, and if we were to reformulate our social policies according to the principles stated above, this would necessitate a substantial reorientation in social welfare policies, judicial policies concerning support payments, and economic policies. We will briefly consider some of the social implications of using such a model of the family as a basis for social welfare policies, and afterwards consider implications for economic policies.

(1) Consequences of the Use of the Emancipated Model of the Family for Social Welfare Policies

At present, people are entitled to social welfare if they are

unable to work and do not live together with a spouse who has an income, or if they are mothers (parents in some provinces) with dependent children and the father (other parent) of the children is unable and/or unwilling to pay support and they do not live together with a man (or woman - whether or not this person is able or willing to pay for the support of the parent and the children is irrelevant). If we apply the emancipated model of the family, people would be entitled to social welfare if they are unable to work irrespective of whether they are living with a spouse who has an income, as is presently the case in Canada with Unemployment Insurance and the Old Age Security, which is paid to the individual irrespective of their family status. For these two programmes, the individual rather than the family is already taken as the administrative unit.

The issue becomes more complicated as we move to the care of dependent children. The cost of raising children involves two distinct components: money needed to pay for the necessities of life - food, shelter, clothing, etc. - and money needed to pay for the work involved in caring for them. The second component can vary independently from the first, since children are already publicly cared for some of the time when they attend public schools. Since the model suggests that childcare should be a responsibility shared between both parents and the state, one can conceptualize the care function of the state as paying for the cost of care for eight hours a day, five days a week (that is, equivalent to a full-time job) and the care function of the parents as resting with the other sixteen hours of the day and night and the two days of the weekend.

Mothers (or fathers, where appropriate) would therefore receive state support which would consist of a care allowance, pro-rated by whatever portion of the eight-hours a day, five days a week the state is already looking after the children. If we further assume that such care allowances were to be paid to all mothers (or fathers), irrespective of whether they were living with a man/woman (who may or may not be the father/mother of the children) and irrespective of whether they have a paying job or not, we would have finally avoided the familism-individualism flip-flop. If both parents had a paying job, they would be handing over the care allowance in toto to a caretaker, if either the mother or the father were at home, they would retain the care allowance as a wage replacement.

Welfare mothers would therefore largely disappear as a category, the only difference being that they would receive the survival portion of the cost of raising children which other people would not receive.

A similar scheme could be instituted for adults in need of care, who would also receive a care allowance to be handed on to whoever provides the care, be this a family member or not. The one drawback of such an approach - and it is a considerable one - is that such a policy would inevitably be expensive.

(2) Consequences of the Use of the Emancipated Model of the Family for Economic Policies

If every adult is considered responsible for his or her own economic support, then it follows that all economic policies not only must strive to attract women and men equally into the labour force but in addition policies must be devised to overcome the barriers

some groups of women encounter when trying to enter or re-enter the labour market. Special policies would therefore have to be devised to facilitate this process. The most important impediment, however, to equal participation of women and men in the labour market are current levels of unemployment. However, a case can be made that unemployment is not necessary, and that a full employment policy which is based on political and institutional commitment, full participation and decentralization could generate sufficient jobs for all those who want to have a job. (See Bellemare in cooperation with Eichler, 1983, for a detailed exposition of this argument).

In the context of a full employment policy, if successfully instituted, care allowances such as proposed above would become financially feasible. Under such a policy, unemployment costs would be drastically reduced, and in addition most of those people now receiving benefits would not only no longer receive benefits but pay taxes themselves. Part of the monies so generated could be used to finance the societal contribution to childcare.

Conclusion

In this paper, we have, first, considered characteristics of contemporary families in highly industrialized countries and argued that they are characterized by four predominant traits: discrepancies between household and family membership, with resulting inter-household economic obligations, a mix of income generation patterns and of one-parent households and husband-wife families.

Subsequently, we looked at the consequences of these patterns for social welfare and economic policies, given that underlying

current policies are two predominant principles, namely a support principle and the family-as-administrative-unit principle. These principles are inherent in two implicit models of the family underlying social policies, namely the patriarchal model of the family and the equalitarian model of the family. While the equalitarian model of the family is non-sexist in intention and format, it is nevertheless still premissed on a monolithic conception of the family - both models result by necessity in a familism-individualism flip-flop because of the contradiction inherent in combining the support principle and taking the family as the smallest administrative unit given current diversities in family styles.

Finally, we suggested that a third model of the family, the model of the emancipated family, is more appropriate as a basis for contemporary welfare and economic policies.

One of the implications of such an approach would be that the difference between economic policy and family policy in issues involving money would disappear. The issue would have to be thought through separately for non-money policies, such as policies involving zoning regulations or immigration policies, to name just two examples.

Another implication would be that all families would receive societal support, irrespective of their composition or structure. This would include overcoming the dilemma of whether societal support should go to "working mothers" or to "mothers at home", since support would be tied to the child, and not to the labour force status of mothers. In a time of great variability of family styles (and there is no indication that the current diversifying process is slowing

down) anything else is unacceptable, since the state should not determine styles of living together in a democratic society.

Further, this model would allow full involvement of fathers as well as mothers in childcare, assuming that any care allowance would be available to either parent.

Most importantly, implementing social policies which are premissed on the notion that care for people in need of care is a societal responsibility, rather than a private one, is a precondition for a humane society.

FOOTNOTES

1. An early formulation of this thesis can be found in Eichler (1983:115-118).
2. The first part of the paper had to be significantly shortened due to space considerations.
3. This should not be read to imply that the two identified changes are the only important changes. Inkeles (1980) in a very interesting paper, explores the convergence of family patterns with increasing industrialization and urbanization. In particular, fertility shows a clear pattern of convergence towards zero population growth. I am merely concentrating on the two patterns which I see as being most important for some of the social policy dilemmas of today.
4. One of the conclusions I reached towards the end of the paper is that it is impossible to make a clear distinction between social policies in general and economic and social welfare policies, since all social policies are based on some implicit model of either the family or the individual as he or she does or does not relate to family members. This being the case, the term "social policy" is occasionally used as a shorthand expression for economic and social welfare policies, although it is recognized that the three are not identical in their emphases.

5. A monolithic approach has been described elsewhere (Eichler, 1983:9) as being "characterized by the assumption that high interaction in one dimension of familial interaction coincides with high interaction in all other dimensions. The dimensions in question here are the procreative, socialization, sexual, residential, economic and emotional dimensions." By contrast, the dimensional approach to families is characterized by the assumption that interaction in any of the dimensions identified can vary independently (Eichler, 1983:10).
6. The countries elected for analysis here are those included in the World Development Report 1982 as industrial market economies and nonmarket industrial economies, respectively, with the exception of Spain, which was omitted by oversight, and Ireland, which was omitted because the data were presented in an inconsistent manner for different indicators. For illegitimacy rates, no information was available for the USSR.
7. This would not apply where couples live together in stable unions outside of marriage, as seems quite common in Sweden.
8. For those countries for which no information is provided but which are included in the other tables, labour force participation of women was not broken down by age. They were therefore omitted from this table.
9. I am aware that the categorization of earning patterns into one-earner and two-earner families does not exhaust

the possible income generation forms. The discussion is restricted to these two types because they are seen as the most important ones, and in order to keep the discussion relatively simple.

10. In case this is not immediately obvious to the reader, consider the concept of a two-parent family which is usually equated with that of a husband-wife family with dependent children. In an increasing number of cases, one spouse (usually the husband) will not be the parent of the children, due to the effect of divorce and remarriage. However, usually he will be treated by policies (e.g. social welfare policies) as the father, while by implication the biological father often is ignored if he is not part of the same household as his children.

11. This is an explicit aspect of labour economics. Consider, for instance, the following statement from the International Encyclopedia of the Social Sciences:

> In every culture, most persons are engaged, a good part of their lives, in activities that may be considered as work. But such activities may or may not qualify for inclusion in what may be regarded technically as part of the working force. For example, in the United States the services performed by housewives, although highly desirable from a societal point of view, are not regarded as economic. Housewives are therefore excluded from what is measured as the working force because such work is outside the characteristic system of work organization or production. Moreover, their inclusion in the working force, for purposes of economic analysis, would not help policy makers to solve the significant economic problems of American society. (Jaffe, 1972:469)

12. Article 15 of the Canadian Charter of Rights and Freedoms (to come into effect in 1985) states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability."

APPENDIX 1.

ILLEGITIMACY RATES, 1950-1980, SELECTED COUNTRIES

YEAR	Austra-lia	Austria	Belgium	Bulgaria	Czecho-slavakia	Canada	Denmark	Finland	France	GDR	GFR	Hungary	Italy
1950	3.8	18.3	2.6	2.0	6.0	3.9	7.4	5.2	7.0	12.8	9.5	8.5	3.4
1951	3.9	17.6	2.3	2.5	5.4	3.8	7.0	4.9	6.8	13.2	9.4	8.4	3.4
52	3.9	16.5	2.3	2.1	5.0	3.8	6.8	4.7	6.7	12.8	8.8	8.1	3.4
53	4.0	15.9	2.2	3.7	5.1	3.8	6.9	4.5	6.7	12.9	8.5	8.2	3.3
54	4.0	15.5	2.1	4.8	5.3	3.9	6.7	4.4	6.6	13.1	8.2	7.8	3.2
55	4.1	14.4	2.1	6.4	5.3	3.8	6.6	4.2	6.4	12.8	7.7	7.0	3.1
56	4.2	13.5	2.1	7.2	5.4	3.9	6.8	4.2	6.3	13.1	7.3	6.6	3.0
57	4.2	13.3	2.0	7.4	5.4	4.0	6.9	4.3	6.2	13.1	7.0	6.4	2.8
58	4.6	13.2	2.0	7.6	5.1	4.0	7.2	4.0	6.1	12.2	6.7	5.7	2.7
59	4.7	13.3	2.1	7.7	4.9	4.2	7.3	4.1	6.1	11.8	6.5	5.7	2.5
1960	4.8	13.0	2.1	8.0	4.8	4.3	7.8	4.0	6.1	11.4	6.1	5.5	2.4
61	5.1	12.6	2.0	8.1	4.5	4.5	8.0	4.1	5.9	10.9	5.8	5.5	2.4
62	5.4	12.0	2.1	8.4	4.5	4.8	8.3	4.0	5.9	9.9	5.4	5.4	2.2
63	5.7	11.6	2.2	8.8	4.7	5.3	8.9	4.2	5.9	9.1	5.1	5.3	2.2
64	6.5	11.3	2.3	8.8	4.9	5.9	9.3	4.4	5.9	9.4	4.8	5.2	2.0
65	7.0	11.2	2.4	9.4	5.1	6.7	9.5	4.6	5.9	9.8	4.6	5.2	2.0
66	7.4	11.4	2.5	9.6	5.3	7.6	10.2	4.8	6.3	10.0	4.6	5.1	2.0
67	7.7	11.5	2.5	9.7	5.4	8.3	-	5.1	6.5	10.7	4.6	5.0	2.0
68	8.0	12.0	2.7	9.6	5.6	9.0	11.1	5.3	6.4	11.5	4.8	5.0	2.0
69	7.8	12.2	2.7	9.2	5.7	9.2	11.3	5.6	6.8	12.4	-	5.2	2.0
1970	8.3	12.8	-	9.3	5.7	9.6	11.0	5.8	7.1	13.3	5.5	5.4	2.2
71	9.3	13.0	3.3	9.6	5.5	9.0	12.3	5.5	7.4	15.1	5.8	5.8	2.3
72	-	13.7	3.0	9.9	5.2	9.0	14.4	6.7	7.8	16.2	6.0	6.0	2.5
73	9.8	13.7	3.0	10.7	4.6	9.0	17.1	7.9	-	15.1	6.3	5.9	2.5
74	9.5	13.8	3.1	9.6	4.7	5.9	18.8	9.0	8.7	16.3	6.3	5.7	2.6
75	10.2	13.5	3.1	9.3	4.8	8.7	21.7	10.1	8.5	16.1	6.1	5.6	2.9
76	10.1	13.8	3.1	9.5	4.7	10.2	24.0	10.9	8.5	16.2	6.3	5.7	3.1
77	10.3	14.2	3.1	9.8	4.8	10.8	25.9	11.1	8.8	15.8	6.5	5.9	3.5
78	11.0	14.8	3.4	9.9	4.9	11.4	27.9	11.4	9.4	17.3	7.0	6.3	3.9
79	11.7	16.5	-	-	-	11.7	30.7	12.0	10.3	19.6	7.1	6.4	-
1980	-	17.8	-	10.9	-	12.8	33.2	13.1	11.4	22.8	7.6	7.1	-

Note: In case of discrepancies in rates for the same year and country, the figure in the later edition has been used.

Japan	Nether-lands	New Zealand	Norway	Poland	Sweden	Switzer-land	U.K.	U.S.A.
2.5	1.5	4.0	4.1	-	9.8	3.8	5.1	4.0
2.2	1.4	4.3	4.0	-	10.1	3.5	4.8	3.9
2.0	1.4	4.5	3.7	-	9.9	3.5	4.8	3.9
1.9	1.3	4.3	3.6	-	9.7	3.6	4.7	4.1
1.7	1.3	4.3	3.5	-	9.8	3.7	4.7	4.4
1.7	1.2	4.5	3.4	4.7	9.9	3.6	4.7	4.5
1.6	1.2	4.6	3.5	5.6	10.2	3.7	4.8	4.6
1.5	1.2	4.9	3.5	5.3	10.1	3.8	4.8	4.7
1.4	1.2	5.0	3.6	5.2	10.2	3.6	4.9	5.0
1.3	1.4	5.1	3.6	5.0	10.4	3.8	5.1	5.2
1.2	1.3	5.3	3.7	4.5	11.3	3.8	5.4	5.3
1.2	1.4	5.8	3.7	4.3	11.7	4.0	6.0	5.6
1.1	1.5	8.0	3.8	4.2	12.4	4.2	6.6	5.9
1.1	1.6	8.8	3.9	4.1	12.6	4.1	6.9	6.3
1.0	1.7	9.9	4.2	4.1	13.1	4.2	7.2	6.8
1.0	1.8	10.9	4.6	4.5	13.8	3.9	7.7	5.4
2.4	2.0	11.6	4.9	4.6	14.6	3.8	7.9	8.4
1.9	2.1	12.7	5.1	4.9	15.1	3.9	8.4	9.0
2.1	2.0	13.0	5.6	4.9	15.8	3.8	8.5	9.7
2.0	2.2	13.0	6.1	5.0	16.3	3.8	8.4	10.0
2.0	2.1	13.3	6.9	5.0	18.4	3.8	8.3	10.7
1.9	2.0	14.3	7.9	4.9	21.6	3.7	8.4	11.3
0.9	1.9	14.7	8.7	4.9	25.1	3.7	8.6	12.4
0.8	1.9	15.2	9.1	4.7	28.4	3.8	8.6	13.0
0.8	2.0	15.8	9.3	4.8	31.4	3.7	8.8	13.2
0.8	2.1	16.6	10.3	4.7	32.4	3.7	9.1	14.2
0.8	2.5	17.4	10.9	4.8	33.2	3.8	9.2	14.8
0.8	2.7	18.9	11.6	-	34.7	3.9	9.7	-
0.8	3.1	20.1	11.9	4.7	35.9	4.1	10.2	16.3
0.8	3.4	20.9	13.0	4.7	37.5	4.4	10.9	17.1
0.8	-	-	14.5	4.7	39.7	-	-	-

Sources: United Nations Demographic Yearbook 1959, 1965, 1969, 1975, 1981

for Canada as of 1973, Eichler 1983, p. 206

APPENDIX 2.

CRUDE DIVORCE RATES

YEAR	Australia	Austria	Belgium	Bulgaria	Czechoslavakia	Canada	Denmark	Finland	France	GDR	GFR	Hungary	Italy
1950													
57	0.65	1.17	0.50	0.90	1.07	0.40	1.43	0.81	0.69	1.33	0.77	1.81	-
58	0.70	1.18	0.47	0.80	1.18	0.37	1.46	0.84	0.70	1.33	0.79	1.51	-
59	0.73	1.21	0.48	0.93	1.15	0.37	1.42	0.84	0.66	1.40	0.80	2.20	-
1960	0.65	1.14	0.50	0.90	1.12	0.39	1.46	0.82	0.66	1.42	0.88	1.66	-
61	0.63	1.14	0.50	1.07	1.19	0.36	1.43	0.88	0.67	1.52	0.88	1.74	-
62	0.68	1.12	0.51	1.01	1.20	0.36	1.38	0.89	0.65	1.46	0.87	1.73	-
63	0.69	1.14	0.56	1.02	1.22	0.41	1.38	0.92	0.63	1.44	0.88	1.82	-
64	0.71	1.16	0.58	1.06	1.20	0.45	1.37	0.98	0.69	1.62	0.96	1.94	-
65	0.75	1.16	0.58	1.06	1.32	0.46	1.37	1.00	0.72	1.56	0.99	2.00	-
66	0.85	1.19	0.61	1.04	1.42	0.51	1.40	1.06	0.74	1.64	0.98	2.02	-
67	0.82	1.21	0.63	1.16	1.39	0.55	1.43	1.13	0.75	1.66	1.05	2.06	-
68	0.89	1.32	0.63	1.16	1.51	0.55	1.56	1.17	0.73	1.68	1.08	2.07	-
69	0.98	1.35	0.67	1.11	1.66	1.24	1.83	1.27	0.76	1.69	1.19	2.12	-
1970	1.02	1.40	0.66	1.16	1.74	1.37	1.93	1.31	0.79	1.61	1.26	2.21	-
71	1.21	1.34	0.73	1.11	1.95	1.37	2.70	1.55	0.93	1.81	1.31	2.27	0.32
72	1.23	1.33	0.81	1.19	1.84	1.48	2.63	1.78	0.94	2.04	1.40	2.33	0.60
73	1.32	1.33	0.86	1.26	2.02	1.66	2.52	1.89	-	2.27	1.45	2.43	0.33
74	1.30	1.41	1.03	1.33	2.07	2.00	2.60	2.13	1.11	2.46	1.59	1.69	0.32
75	1.76	1.43	1.12	1.27	2.18	2.22	2.62	1.99	1.16	2.47	1.73	1.82	0.19
76	4.54	1.49	1.29	1.29	2.12	2.34	2.58	2.14	1.20	2.67	1.76	1.74	0.22
77	2.84	1.55	1.31	1.49	2.08	2.38	2.63	2.13	1.39	2.57	1.22	2.55	0.23
78	3.17	1.65	1.37	1.45	2.19	2.43	2.56	2.18	1.54	2.58	0.53	2.66	0.21
79	3.37	1.74	1.37	1.36	2.12	2.51	2.55	2.14	1.59	2.67	1.29	2.58	0.19
1980	4.75	1.77	1.47	1.48	2.21	2.59	2.65	1.98	-	2.68	1.56	2.59	0.21
81	-	1.79	1.55	-	2.26	-	2.83	-	-	2.90	-	-	0.19

Japan	Nether-lands	New Zealand	Norway	Poland	Swedon	Switzer-land	England & Wales U.K.	U.S.A.	USSR
0.79	0.48	0.62	0.58	0.55	1.20	0.89	0.52	2.23	-
0.81	0.47	0.76	0.59	0.55	1.17	0.85	0.49	2.11	-
0.78	0.49	0.70	0.62	0.53	1.18	0.89	0.52	2.23	-
0.74	0.49	0.69	0.66	0.50	1.20	0.87	0.51	2.18	-
0.74	0.49	0.71	0.68	0.56	1.16	0.87	0.54	2.25	1.27
0.75	0.48	0.71	0.67	0.59	1.17	0.85	0.61	2.21	1.34
0.73	0.49	0.75	0.67	0.64	1.12	0.83	0.67	2.26	1.30
0.75	0.51	0.73	0.69	0.67	1.20	0.84	0.72	2.35	1.46
0.79	0.50	0.69	0.69	0.75	1.24	0.85	0.78	2.47	1.56
0.80	0.55	0.77	0.71	0.77	1.32	0.84	0.78	2.54	2.77
0.84	0.59	0.75	0.76	0.85	1.36	0.87	0.86	2.63	2.74
0.86	0.64	0.79	0.80	0.91	1.42	0.92	0.93	2.91	2.72
0.89	0.71	1.08	0.82	1.01	1.52	0.97	1.04	3.15	2.56
0.93	0.79	1.12	0.88	1.06	1.61	1.04	1.18	3.46	2.62
0.99	0.68	1.17	0.96	1.11	1.69	1.13	1.51	3.73	2.63
1.02	1.12	1.19	1.02	1.13	1.87	1.20	2.41	4.05	2.64
1.03	1.33	1.22	1.18	1.19	2.00	1.25	2.14	4.35	2.72
1.04	1.41	1.47	1.29	1.18	3.33	1.27	2.29	4.62	2.95
1.08	1.47	1.55	1.39	1.21	3.14	1.39	2.43	4.82	3.08
1.11	1.52	1.75	1.45	1.11	2.64	1.51	2.56	5.02	3.35
1.14	1.55	1.72	1.51	1.24	2.47	1.65	2.61	5.03	3.47
1.15	1.60	1.85	1.54	1.02	2.45	1.66	2.92	5.18	3.49
1.17	1.69	1.96	1.62	1.14	2.45	1.63	2.80	5.36	3.61
1.21	-	-	1.62	1.12	2.39	1.65	3.01	5.19	3.50
1.30	1.96	-	-	1.11	2.42	-	-	5.30	-

Source: UN Demographic Yearbook 1976, 1978, 1981

APPENDIX 3.

LABOUR FORCE PARTICIPATION OF WOMEN AND MEN, AGE 20-40, SELECTED COUNTRIES, 1981[9]

Country	Age 25-29 Men	Age 25-29 Women	Age 30-44 Men	Age 30-44 Women	Comments
Australia (76)	95.4	50	96.1	54.8	
Austria (1980)	71.9	54.9	95.8	56.0	for ages 20-29 30-49
Czechoslovakia (80)	98.2	90.7	98.3	92.2	
Canada (80)			92.2	61.4	for ages 25-44
Denmark	92.5	88.6	97.3	84.8	
Finland	91.7	81.6	93.6	83.1	
France	94.3	68.4	96.9	60.9	
German Fed. Rep.	89.4	63.8	97.7	56.7	
Hungary (1980)	98.2	69.8	98.1	83.0	
Italy	93.0	54.6	98.6	46.6	for ages 25-29 30-39
Japan	96.3	50.0	97.6	56.6	
Netherlands	93.0	48.0	96.9	37.5	
New Zealand*	68.0	95.3	71.6	96.4	
Norway	89.8	62.1	97.9	73.9	
U.S.A.	93.9	67.8	95.1	66.2	

Source: 1982 Year Book of Labour Statistics, Table 1.

*These figures have been reproduced as they are found in the source. However, I suspect that the columns were inadvertently mixed up, so that the male rate really represents the female rate and vice versa. Otherwise, the pattern would be absolutely unique.

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Intergenerational exchange, aging trends and the public/private support dimensions

Managing interdependence: family development, policy and the care system in an aging society

by KAREN ALTERGOTT

Introduction

Older people are increasing in number and proportion in most societies. During the twentieth century, the population of people sixty-five and older in the U.S. has increased from two million to twenty-five million, from 4% to 11% of the entire population. The fastest increase has been in the age group 85 and older. The number of adults in this age category doubled from 1960 to 1980 and is expected to increase elevenfold by 2020 in the United States. Social change must follow demographic transformation of such magnitude. An important aspect of social change concerns the care system of older people. "To question the need of an 85-year old who requests some kind of home-based care or service seems absurd," (Kahn and Kamerman, 1976); likewise, to question the need of an aging society for expanded care systems seems absurd. However, there are many questions regarding the structure of care systems. With a focus on the contributions of the family and of the state, several specific questions will be addressed in this paper. What are the effects of family structure on the nature of care systems? What are the relative contributions of the family and of the state to the care system of older people in aging societies? Which set of contributions is likely to expand to meet the needs of the future? Considering these questions will show both the importance and the complexity of policy initiatives as the state, families and older individuals establish new interdependencies.

Demographic Change and Family Development

Family development in aging societies is elaborated in several ways with new timetables and new variations appearring. Shanas describes families of the elderly as new pioneers (1980). Indeed, they are making roles where none existed, negotiating new role bargains that are more or less workable and

stumbling into family structures that are more or less comfortable, all without benefit of the extensive services, conveniences and supplies those of us in more well-travelled stages of the life course take for granted. This is another example of the force of familia farber (Boulding, 1980), making the future by actively responding to the present.

Evidence of the potential and limits of emerging family structures in aging societies has been presented by demographers and sociologists. The probability that a woman will experience a marriage that produces offspring and will survive into old age with her spouse has increased through the 20th century (Uhlenberg, 1978). People are likely to pass through the later stages of family development. In old age, most people have at least one surviving child. Furthermore, one child is likely to be residentially nearby and accessible (Shanas, 1979). Marriage partners are present for most men (79% for 65-74; 68% for 75+), though for only a minority of older women (48% for those 65-74 and 22% for those 75+) (Special Commission on Aging, 1982). 94% of elderly parents have grandchildren and 46% have great grandchildren with whom help may be exchanged (Shanas, 1980). This trend of survival into old age with marriage partners and other relatives is repeated throughout the world. Another common trend, however, is for each successive generation to have fewer children. Therefore, older individuals find themselves at the top of a narrow pyramid; four or five generations coexist, but each generation has few members (Bengston and Terre, 1980). Shanas suggest that our elders are able to create safe havens for themselves in aging societies, primarily through the availability of family and kin (1980). It is not clear what kind of care system contemporary kin structures can sustain or under what conditions the family can actually be a safe haven.

New patterns of challenges and tasks are emerging in later life. In particular, caring for older family members is now a predictable component of family life. The postparental and retirement stages, institutionalized as stage of life only in the twentieth century (Chudacoff and Hareven, 1979), are now even more complex as postparental years blend into parent-caring years and retirement couples become spouse-caring structures and finally, one becomes the dependent elder who is cared for by adult offspring.

Family is available for most older people in aging societies; lineage and marital roles carry aid to and from the older individual (e.g., Hill, et al., 1970). Although this picture is quite positive and suggests a high degree of success at rolemaking and caring in the contemporary family, we can ask whether the traces of helpfulness observed are sufficient to integrate, serve and socialize older people and whether the tasks carried out by the family are both of sufficient quality and kind and yet not overburdening. Also, variations among families based on class, abilities to care and diverse constraints should not be masked in attempts to portray adequacy in the system of care for older people.

Family Care

When family care is discussed, several very different realities are grouped together and several facts are overlooked. First, caring tasks most often fall to one central individual in the U.S.. Very few relatives other than a spouse or offspring provide extensive longterm care. Very few relatives give substantial assistance to the primary caregiver (Lopata, 1978; Gibson, 1972). Family care may be a euphemism.

Second, the nature of caring is conditioned by the family positions held by caregivers and recipients and by the developmental stage of the families

at the time caring takes place. The predictable disability of a spouse occurs most frequently in postparental and retirement stages, after the marital dyad has established anew their independent household and lifestyle. This minimal family structure of two people faces tasks which can be quite demanding on the well spouse (Gibson, 1972; Fengler and Goodrich, 1979; Daatland, 1983). When parents are cared for by adult offspring, the picture is more complex. The adult offspring may live in the context of her or his family of procreation. This interface of two families, the older parent or couple and the offspring's family, calls attention to a conceptual issue in family sociology. With aging, the interdependence of at least two nuclear families through shared personnel and continued familial roles show the family system to be more intricate and more stable, even across great distance (Moss, 1983,) than commonly assumed. Rosenmayr and Kockeis wrote of revocable detachment; the increasing independence in the child-launching stage may be reversed and the parent-child interdependence reestablished across household boundaries when necessary (1963). The linked pairs of nuclear households are to be observed for consequences or parent-caring.

Third, care consists of a wide range of activities. Communicating positive concern, casual monitoring of another's mental or physical condition, providing specific information, resources or assistance, complete physical care and constant surveillance all represent forms of care that can be received from a wide variety of sources. The social meaning of care is influenced by the position-pair in which adult-care takes place. The degree and nature of care provided and needed is somewhat contingent on the life stages of the caregivers and the recipients.

In order to better understand personal, familial and social consequences of caring for older people and to clarify needs and possibilities for policy

changes, the simple notion of family care must be made more complex by introducing developmental time and a differentiated care system. Spouses caring for each other frequently precedes solitary living. Widowed, divorced and never married people experience interdependence even when they live in 'independent' households. Finally, when intergenerational interdependence gives way to greater dependence of an older parent on an adult (perhaps elderly) offspring, a new developmental turning point is reached. What, then, are the care systems that characterize these three newly emerging stages of life?

Family Development and the Care System

1. Marital Interdependence: Spouse Caring

Husbands and wives are involved in a dyadic system of interdependence that is unique to aging societies. Low fertility and early childbearing has led to the emergence of a postparental period of life. When children reach adulthood and establish independent households, their parents could be as young as 40. Most married adults live in a 'couple-only' household for some years - and perhaps for decades - prior to retirement from the labor force. This postparental stage is a new phenomena and has been "the subject of much rhetoric but little research" (Atchley and Miller, 1980). The next well-recognized stage of family development is entered when one or both spouses retire. The retirement stage as a modal experience is also unique to aging societies with income maintenance policies. Prior to the twentieth century, this family stage is one that relatively few could look forward to experiencing. Although a great deal could be said about these family development stages, there is a less commonly discussed but predictable family

transition with greater relevance for the care system of older adults.

Sometime during the decades of conjugal interdependence represented by the postparental and retirement stages of family development, the disability or illness of one spouse is likely to cause "significant changes in the internal organization of married couples" (Aldous, 1978). Verbrugge (forthcoming) has documented the increases in morbidity and restricted activity that accompany the declining mortality rates in aging societies. Interdependence of spouses frequently gives way to greater dependence of one spouse on the other. Daily life is transformed; activities, interactions and transactions with others outside of the household change. This may occur early, since the incidence of disability begins to increase noticeably around age 55, or late, since disability increases dramatically around age 75. While only about 10% of the population over age 60 living in the community at one point in time are disabled to a significant extent (Shanas, 1979), disability and illness of one spouse is a stage many couples pass through. For example, in a study of widows, Lopata found that 46% of the women provided extensive and often longterm care to their husbands before death (Lopata, 1973). Older people are much more likely to remain in the community even with significant disabilities that leave them bedfast or housebound if they have a spouse to care for them (Shanas, 1979).

What system is relied on to provide care, manage care and support the caregiver in this stage of family development? What tasks and troubles are associated with the transition to a spouse caring family? What are the consequences to the family and the individuals of performance of the caring tasks?

The spouse is the center of the care system and this true for childless and parental couples. In health and illness, an older married individual is

likely to interact intensively with his or her spouse and is likely to interact less with out-of-household kin than an unmarried individual (Atchley and Miller, 1980). This seems to apply to caring tasks as well. The marital dyad is a relatively closed care system. Daily tasks, such as housework and meal preparation are much more likely to be performed by a spouse than by a child; occassional tasks such as shopping are more likely to be shared by spouses and children or by spouse and paid help (Shanas, 1979). This is not a result of filial abandonment or irresponsibility. Rather, the years of conjugal interdependence, the strong privacy norms that are part of contemporary marriage and the desire to avoid burdening offspring lead to the well spouse taking on most caring tasks. Unless the well spouse is willing and able to manage other care resources - kin, formal services, neighbors, friends and the disabled spouse him- or herself - the burden of care falls to the well spouse.

When 'family care' is discussed in this stage of life, the term really stands for 'spouse care.' Furthermore, women are much more likely to be caring for husbands. As Wariness has pointed out, women comprise the majority in the "invisible welfare system" of contemporary societies, and this is clearly the case in late life marriage. This role is created, maintained and enacted by more and more women each year.

Whether the role is performed by choice or due to lack of options and whether care provided is adequate to produce high quality of life is not clear. Renegotiation of marital roles during periods of health decline and disability may be accomplished more or less satisfactorily, depending upon the quality of the marital relationship prior to dependency and the ability of the well spouse to provide care. These characteristics are in turn conditioned by class, gender and the caregiver's own physical and mental

health. The absence of successful role models for both caregiving and carereceiving spouses and the lack of formal and informal support for the caregiver in her (or his) new role reduce the probability that developmental tasks will be accomplished.

What are the consequences to the caregiver? Small studies of care-giving spouses, usually wives, have shown many possible negative consequences, including the burden of the various maintenance activities, the stress due to worry, guilt and the difficulty of saving face for the newly dependent spouse and due to self-neglect in terms of self care activities and social interaction (Fengler and Goodrich, 1979; Steinmetz 1983). Life and marital satisfaction may be decreased as the content of the marital relationship shifts from companionship to caring. Atchley and Miller (1983) found that declines in husband's health did not affect his wife's life satisfaction directly, but indirectly due to the husband's own declining life satisfaction, while a wife's ill health directly reduced her husband's life satisfaction.

What are the consequences to the care-receiving spouse? The greater the dependence on informal sources of help, the more negative the evaluation of daily life according to one study of chronically ill elders (Altergott and Eustis, 1981). The lack of attention to self care activities and the extensive rolemaking the less able spouse must engage in has been noted by others (Daatland, 1983). Greater attention must be paid to the consequences of dependence on a spouse and of the differential roles played by husbands and wives as caregivers. Of course, economic and resource differences (personal, educational, training, adequate time, relevant abilities) provide sources of variation in the adequacy of the care system. For example, men caring for wives may face difficulties due to a lack of caring skills and

experience (Lebowitz, 1984). Women caring for husbands may lack physical strength, financial resources or expertise.

Given the limited resources of any one person to provide longterm care and the given limited training, expertise and equipment of elderly couples we must ask whether the quality of care provided within the conjugal unit is sufficient. It cannot be assumed that a spouse provides the best or even adequate care, simply because there is a preference for family care. Indeed, harmful consequences, from lack of necessary medical care to beneign neglect to abuse have been identified as possible outcomes of spouse-care (Steinmetz and Amsden, 1983). Existing research suggests that the care system in spouse-caring families is fragile and perhaps deficit in personnel given the demands of caring tasks.

The consequences to the caregiver can be a sense of reward and accomplishment, necessarily balanced against burden, stress and potential self neglect. The consequences to the recipient spouse can be comfort and care given in an affectionate context, balanced against issues of dissatisfaction with dependence and possible inadequacies of care. The marital dyad however, is certainly transformed from a system of interdependent roles to a less-balanced and relatively unfamiliar system of dependence.

Formal sectors of the support system have been underutilized Lopata 1973a), especially by still-married individuals. The resistance to formal care may go beyond a desire to be independent (Moen, 1978) to include a preferred form of interdependence - depending on one's spouse - regardless of problem, burden, adequacy or availability of alternatives. Caregivers accomplish a great feat if they manage to broaden the care system to include other relatives, neighbors, friends and peer support groups without

sacrificing the autonomy and intimacy of the marital bond. Likewise, only the most burdened, more sophisticated and resourceful caregiving spouses are likely to utilize the sparsely available formal supports like respite services, day care, inhome care and other professional services (Crossman, 1981). Policy developments can increase the availability of such formal supports; only then can the skill of incorporating and managing these external resources be more widely practiced by caregiving spouses.

2. Alone and Interdependent: The Context of Self Care

Nine million older people in the U.S. are widowed (Brody, 1981). In many modern industrial countries, living alone is becoming a stage of life between marriage and dependency or death. This is predominantly a woman's experience, since women so frequently outlive their spouses. In addition, many older people in the U.S. reach old age without ever marrying (6%, 65-74) or divorced (4%, 65-74) (Special Committee on Aging, 1982). Never before have so many older people spent so many years in independent living situations. Older people living independently do not live in isolation from others. Rather, they act to meet others expectations of independence, to recruit others to help in time of need and to avoid an unwanted degree of dependence. What kind of care system do these individuals maintain?

Both previously married and never married older adults who live alone, tend to be at the center of their own care system. That is, they are involved in self care and they manage any other sources of assistance. The never married are at an advantage in that they do not experience the desolution and disorganization associated with loss of a spouse; they are at a disadvantage in that they lack the potential resource of certain caregiving relatives (Gubrium, 1975; Lopata, 1973). When independent living elders

receive care from other sources, it is likely to come from offspring or paid service providers (Shanas, 1979) with the latter a preferred option for most older people in the U.S..

Policies of modern societies have facilitated independent living arrangements for non-married elders, which represent a continuation of the 'intimacy at a distance' older adults in many countries value (Rosenmayr and Kockeis, 1963). Self reliance has been fostered by income policies, cultural emphasis on autonomy, the trend toward allowing resources to flow to younger generations when possible, mobility of families and lack of institutionalized alternatives (Schorr, 1980). At the same time, income maintenance policy has produced a definite downward mobility relative to earlier stages of life that is not well moderated by housing, service and medical policies. A lack of understanding regarding what our income policies provide combine with complex and enduring dilemmas regarding equity to individuals by gender, family status and lifelong labor experiences to prevent income adequacy for all. This is felt most strongly by women in the American context where elderly widows or divorcees are frequently pushed into late life poverty. Inequities and unanticipated consequences of income maintenance policies seem to be self-perpetuating in the U.S.. Beattie (1983) found that 65% of non-married men and 75% of non-married women not up to 'moderate living standards' in late life, while 40% of older married couples were in such a disadvantaged position in the U.S.. This is the disadvantaged context in which self care and the development of care systems is attempted by older men and women who find themselves living alone in late life. Although social security as an income maintenance policy is not designed as a sole source of retirement income, it is a policy that punishes people who attempt to improve their status by working. There is a "50% marginal penality on earnings (in

addition to their usual taxes) for all earnings above $4500" (Viscusi, 1981, p. 175). It is difficult, without dramatic policy revision, to change the structural disadvantages of the unmarried and of women in late life.

Some independent living elders are disadvantaged in term sof care from informal sources as well. They may need care, but receive care from no one. Of the 14% of the elderly who are greatly or extremely impaired, about one million receive neither formal nor informal sources of care (Montgomery, 1982). They may lack family, community contact and access to service organizations.

While offspring, daughters in particular, are playing a central supportive role in the lives of independent living elders, one-fifth of older people arrive at old age without surviving offspring. The principle of substitution has been suggested (Shanas, 1980), but do other kin step in when children are absent from the care system? Available studies suggest that childless elders who are no longer married do interact more with siblings, other relatives, friends and neighbors and are likely to turn to these resources in times of need (Johnson and Catalano, 1981), but the quantity and quality of care provided is not well-documented. Lopata (1978) found little involvement of any kin in the lives of widows.

Adaptive strategies for independent elders include self-reliance, use of formal services in lieu of family help, avoidance of formal services and dependence on family and others or use of both informal and formal supports. In a study of public housing and community dwelling elders, Rundall and Evashwick (1982) found that for those who could be identified as following one of these four patterns, most relied either on formal or informal care and relatively few combined both types of care. Given the theory of shared functions, which suggests that an optimal strategy is to obtain resources

that require expertise or technology from bureaucratic organizations and resources that require personal knowledge and responsiveness from family members, it would seem that few elders are managing care systems that optimize the quality of their lives.

Self-care in a context of extensive social contact and reciprocal aid is the predominant image that emerges for the unmarried. When assistance beyond selfcare is required, the availability of offspring or services seems to influence the strategy chosen by the older individual. When selfcare is no longer possible, transition to dependency on either familial or formal care systems is likely, with a substantial minority unable to negotiate any type of care.

3. Generational Interdependence: Parent Care

Dependency is likely to occur when either the physical or financial resources of an older person preclude functionally independent living. It is estimated that 17% of older people have a significantly "reduced ability to carry out independently the customary activities of daily life" and two-thirds of these people remain in the community while only one-third reside in nursing homes (Schor , 1980). Willingness to accept support from offspring is enhanced by fear of institutionalization. Given the failure of community and social services in some countries to respond to the needs of the aged, family predominates in meeting these needs. The transition from interdependence to dependence is a difficult one for both the recipient and giver of care (Fischer, 1983, Glasser and Glasser, 1962) though for different reasons. The older individual is facing a loss of great significance in societies that equate adult status with independence. The greater the disability, the more difficult the negotiation of a new familial role. On

the other hand, the family caregiver, most often a daughter, is facing a complex transition herself. Whether she is preparing for her own old age as a postparental spouse, retired spouse or unmarried woman or is emeshed in a bevy of midlife roles -- parent, worker, spouse -- her personal resources for caring are limited.

The care system for the dependent elder is esentially filial. The recency of extensive filial obligations in this area of life should be clear when we recall the demographic transformation that has occurred in aging societies. Filial care was required less frequently in the past, because generations of adults did not commonly coexist. When filial care was provided, it was frequently balanced by the older relative's transfer of control over property or resources (Schorr, 1980). In contemporary societies, filial care is not usually mandated by law but is provided out of a strong sense of obligation and affection (Van Houte and Breda, 1978). Family members may bankrupt themselves financially, emotionally and socially in the process of preventing the institutionalization of an elderly relative (Neugarten cited in Montgomery, 1980).

A commonly quoted estimate that 80% of all care needs are met by family and friends (Brody, 1978) and 70% of the total cost of care for disabled elders is absorbed by family and friends (Comptroller General, 1977). From available research, we can conclude that the majority of care is given by adult offspring, who may be elderly themselves. Widows sons may provide money and advice across household boundaries, (Lopata, 1973) although is not a common pattern. Less than 3% of older people receive cash support from offspring (Sch[illegible] 1980). This type of care varies in a predictable way by class, with high income offspring providing more economic help. Older men are less likely to receive economic assistance, very old people receive more

and those with many children receive more (Schorr, 1980). It seems that, although direct economic assistance is a minor pattern, it is a form of assistance that can be shared by several children and is differentially available to those in greatest need from offspring with greatest ability to assist in this way.

However, the necessary tasks in daily life, whether household, emotional or social in nature, are likely to fall to one person. An unmarried daughter, or a daughter past childbearing stage or a nearby son or daughter are most likely caregivers, but many daughters are indeed caught in the role overload situation of caring for their families of procreation at the same time substantial assistance to an elderly parent is required.

Nearly half of all women age 46-64 are helping someone outside of their own household and the average number of hours of this type of care is 19 hours per month (Altergott, 1984). Many of the recipients of this care are likely to be elderly parents. Women in this age group with dependent children are somewhat less involved in caring for out-of-household adults (43% vs. 33%).

Many hours are devoted to parent care by adult sons and daughters, and the average hours spent caring depend on the extent of disability and other role obligations these offspring have. In a study of older people and their helpers, Stoller (1983) found that sons spent 15 hours a month helping dependent parents, and this increased for more disabled parents, and for sons who were unmarried or unemployed. Daughters spent 30 hours a month helping, and this increased for those whose parents were more disabled and decreased for those whose parents were still married and for daughters who were married themselves. An interesting finding of this study was that sons were almost as likely as daughters to be first-named as helpers. Care delivered across

household boundaries sustains millions of older Americans at some level; quality of life for individual and for the offspring's family are not well documented or understood.

In a study of daughters providing care to dependent elders, Lang and Brody found the average time spent in direct care varied from very little to around-the-clock, with an average of 8.6 hours per week. They also found that sharing a residence led to an additional 21 hours of care. Daughters who were older themselves (50 or older) spent 5 more hours on care; non-working daughters devoted 5 more hours of care and if the elder was unmarried, 7 more hours was spent on caring. The extreme case then, of an elderly parent living with an older unemployed daughter would lead to an average of a 47 hour work week for the caregiver (Lang and Brody, 1983). Troll (1977) found that two-fifths of adult offspring caring for a disabled elder living with them spent forty hours or more each week in caring activities. In another study, an average of three hours a day in direct care and many more hours of talking, watching and protecting were documented (Nissel, 1980). The consequences of such dependency to the recipient are less frequently documented than the consequences to the caregiver.

One consequence of time spent caring is necessarily less time to spend in other pursuits. For example, one fourth of unemployed women who were caring for an elderly parent had left their last job in order to provide care (Lebowitz, 1984). Over half of married women in midlife work; most unmarried women work. While until 1940, employment of married women outside the home was unusual, now it is the norm, and often necessary to meet the economic squeezes families face (Oppenheimer, 1981). In objective terms, "family caregivers, particularly adult daughters, face increasingly complex time - allocation decisions (Stoller, 1983). But these decisions are frequently

made in the context of her family of procreation or in spite of the role demands of her family of procreation. The possibilities of neglect of other obligations, family conflict over time allocated to caring, feelings of neglect, resentment or jealousy on the part of the caregivers, and even of family breakdown (premature departure of offspring or disrupted marital relations) are not likely when caring tasks take relatively little time. But if a great deal of time is absorbed or a great deal of competition for the caregiver's time is experienced, these family crises may result.

In a small longitudinal study many caregivers were found to be "preoccupied and overwhelmed with dependencies of the parent to the extent that their day-to-day lives were disrupted and their future plans immobilized "(Robinson and Thurnher, 1979). Some families face the developmental task of parent caring better than others. This depends on existing resources and constraints of both the family and of the elderly person. The potential for conflict, negative feelings, burden, strain, family disruption and abuse is as great as the potential for family care as a safe haven (Tobin and Kulys, 1980). The confinement of the caring role to one individual heightens the stress and impacts the rest of the family since they may functionally lose this individual's contribution. On the other hand studies have shown that even a small amount of care sharing (e.g. visits to the elder by others or supplemental in home service provision) can significantly improve the situation of both recipient and central care provider (Tobin and Kulys 1980; Zarit et al , 1980).

One major form of generational interdependence is living together. A declining proportion of married or single older people live within the same household as their offspring (12% of married and 17% of unmarried elders, in the U.S.) although the absolute number of such arrangements is quite high.

Almost two million households in the U.S. have one or more elderly parents as coresidents. This represents nearly as many older people as were alive in 1890 (Schorr, 1980). It is more common among poorer families. More than half of the shared housing arrangements are now, as in 1880, with an unmarried son or daughter (Smith, 1981). In about half of the shared living arrangements, the home is owned by the older individual, an indication of the continued reciprocity in the family care system (Schorr, 1980). In other societies, varying percentages of married and unmarried elders live with offspring. It is always a more likely arrangement for unmarried elders, ranging from one fifth in Denmark to nearly one-half in Eastern European countries (Shanas, 1973). This may be a pattern supported by strong cultural norms, as in Eastern Europe, structural constraints, as in some developing countries, or both culture (emphasis on lineage) and structure (housing shortage) as in Japan. This adaptation is not without problems. In the U.S., some problems result from the years of independent living. Returning to a parental home or joining an offspring's household is likely to lead to conflict due to generational differences in lifestyle, privacy needs of adults and the lack of institutionalized roles for multigenerational family units in many Western societies.

In Japan, almost one-third of households with children contain three generations. Most young families live in the household of their parents, more often the husband's parents than the wife's. Reduced childcare and household burdens of young wives, a higher standard of housing and reduced "career-parenthood incompatibilities" for young families (Morgan & Hirosima, 1983) were advantages of the elder as patron and service provider to the younger generation. Norms of "duty to parents" explain the workability of shared residence. Further work on the consequences of intergenerational

living for the older relative is necessary.

Social policies may cause additional problems for shared-household families however. In the U.S., for example, Supplemental Security Income (an economic supplement based on a means test) considers living with offspring as a economic resource. Benefits from S.S.I. that would enhance the elders position in the family and provide an often essential contribution to the household economy may therefore be denied (Schorr, 1980) or reduced by a third if still available (Viscusi, 1981). Subsidized housing policy has the same generation - separating impact. These implicit family policies constrain elders adaptive strategies, and seriously limit poorer families ability to provide care. Costs of maintaining the older person in a non-institutional setting may be very difficult to bear even for a middle-class family, yet daily care tasks essential to health and well-being are not reimbursed by Medicare in the U.S. context. The addition of an adult dependent is not adequately offset by tax policy. Yet families care, and absorb the costs. Suggestions regarding financial support to families providing care have not been well-received in the U.S. (Prager, 1978) and may not be the right answer to the current questions concerning parent-care (Lebowitz, 1984).

The family relationships in the households that expand to include elderly members are created under conditions of actual dependency. Policy enhances the dependency. Yet over the course of family development time, many will pass through the stage of multi-generational living. Whether elders share a home with a parental, postparental or never married offspring, new family roles and relationshps develop around the caring system this household represents. Many Americans consider this arrangement or institutionalization the only alternatives (Robinson and Thurner, 1979) and

adjust their family life to avoid institutionalization. The consequences to the family frequently represent a crisis. Especially severe constraints on family life are experienced by those caring offspring who are married and for raising children, or for those with scarce economic or personal resources.

Women in their 50s or 60s are major caregivers (Brody, 1978) and absorb much of the stress created by the historically unique position older people and their families find themselves in. Institutionalization is avoided, but in managing the care systems , most elders and their families do not utilize the other scarce formal services and community resources that are available. Contrary to the hypothesis that children serve as linkages to community resources, contemporary families are creating a role that involves "doing it all" in response to a personally held and societally reinforced notion of filial responsibility. Further study of the millions of people in expanded households is essential to understand parent caring and to discover more and less adaptive strategies for enhancing quality of life for the dependent elder, the caregiver and the family.

Recent studies indicate the motivation to care is coupled with a willingness to utilize formal services (Brody 1981) but the necessary link between, societal and familial inputs is yet to be created. Perhaps the all-or nothing solution vis-a-vis professional assistance is already institutionalized. Families may hesitate before reaching out to the formal care sector, since professional dominance and professional interference with ongoing family life is resisted. The current situation usually overburdens one individual and underserves the dependent elder. Two solutions are suggested by Brody (1981): reallocating the caring role within the family, or delegating some tasks to the formal sector. It is clear, in aging societies with growing numbers of disabled and dependent elders and high motivation to

provide care, that the "larger package of responsibilities [needs] to be redistributed" (Brody, 1981:478).

Thus far, the family developments due to demographic and social changes have been identified and the emerging care systems at three points in family time have been described. Elders and immediate family - spouses and offspring - are bearing the burden of care and are responsible for the creation of care systems. The community is a context for the family care system, but services and resources are underutilized due to perceived or actual unsuitability, actual unavailability of services, lack of access to available resources or learned self-reliance in the face of experienced failures of the formal care system. The available research on consequences to the caregiver draws our attention to the crisis aspects of caring for older spouses or parents. In all three increasingly common family structures--spouse-caring couples, selfcaring elders and families of dependent elders--roles are being created and modified in order to fit an historically unique situation.

Family Care and Social Policy

The current trend in the U.S. and elsewhere to further exploit family care and reduce already meager societal supports for families who care can only worsen an already difficult situation. The trend represents a failure of policy, an inadequate or inappropriate social response to the needs of these families and a community contribution to the crisis aspect of care in late life. These failures have been analyzed elsewhere (Estes, 1979). What is the potential for social policy in aging societies, given the undeniable needs of older people and their families? What new balance can be achieved between families facing new responsibilities and the public sector facing new constraints?

Although some authors have declared that the state is already too intrusive in the lives of families (Lasch, 1977), and indeed social support rather than social control is what is required by contemporary families, other authors have contended that the family is "coping with the decline of the public sector" (Aries, 1977). The latter seems to fit the case of aging families. The slowed growth and selective withdrawal of the public sector is indicated by national budget decisions and by political rhetoric supporting the return of "responsibility for services to the individual, the family, the community" since "the family is the best provider of social services" (Hardy, 1982). The controversy of how resources should be allocated to caring for older people has been renewed. The public has been informed through the popular press of the dangers of an aging population, in terms of tax and social security burdens of a supposedly unproductive elderly population. Yet, the public continues to support protection of public benefits to older people (John, 1983).

In all societies, the growth in need for expanded care systems exceeds the public response. Many have criticized this disbalance. Schorr (1980) contends that "advocacy is far more widespread than the services advocated." This is consistent with the widespread availability of "information and referral" services and the relative lack of other services older people can actually be referred to in the hopes of receiving care. While older people and their families insist on community care, it is nursing home care that is most extensively supported by policy (Phillipson, 1982). Therefore, families absorb both costs and caring responsibility. Tobin and Kulys (1980) show that with increases in disability, costs to families increased dramatically, from the equivalent of $37 in care costs to unimpaired elders to $674 for care to extremely impaired elders. Costs to agencies are less sensitive to

increased impairment (varying from $26 to $172 respectively). Brody (1978) acknowledges that the societal response to older people and their families is inadequate and that additional, not alternative, services need to be developed to meet the needs of the 4 1/2 million childless elders as well as the millions already receiving some care from offspring. In the U.S., supportive social and health services such as contained in Medicare, Medicaid, food stamps, housing support, Title XX (Social Services), Older American Act, transportation, training and research & employment programs, been available only since the 1960s. They remain qualitatively and quantitatively inadequate in 19AA due to complex funding patterns and eligibility requirements, differential access by locale and a "focus on the individual, not the family as a point of service need" (Brody, 1980).

The division of labor between the state and the family is skewed quite heavily toward the family. Explicit aging policy in the U.S. has been symbolic, segregationist, beneficial to providers and results in backlash according to Estes (1979). Perhaps familial underutilization of formal services reflects the resultant unsuitability of policies that have been implemented.

If available structures are unworkable for family goals, alternative structures are likely to be created through various types of social action (Boulding, 19AO). Action to directly provide care, observed today, may be followed by collective and polictical action to improve an intolerable reality. Shanas (19AO) suggests that if families are unable to fill the needs of older members, "they will seek to modify the bureaucratic structure in a way that is more satisfactory to both older people and their kin." This ma generate conflict between people in middle and later life and the policy m ers who are trying to place the burden of care on the family. It may also

generate age-based social conflict if families without elderly parents refuse to pay taxes to assist families who have dependent elders (Nissel, 1980).

Most discussion of policy in the literature is somewhat optimistic, however, regarding both the public's commitment to sharing the risks of late life family crisis and to the policymakers' sympathy with the caring families (Shanas and Sussman, 1981; Giele, 1979). Kahn and Kamerman describe the trend toward defining communal care systems for the aged and their families as a social utility (1976); this trend has gone farther in many European societies than in the U.S.(Amann, 1980). But as the number of parent-caring and spouse-caring families increase and as the "families capacity to give care and mitigate stress" (Lang and Brody, 1983) is taxed, greater public support for improved and expanded communal solutions may be necessary. Lang and Brody "call for family-focused social policy; that is, for programs that address the needs of the total family - caregivers as well as impaired elders" (p. 200). These authors and others suggest there is a potential for the development of policy that will help smooth the transitions associated with various predictable crises of family life and that can more equitably distribute public resources to families at different stages of the life course.

The basic human value to sustain quality of life and the societal obligations to provide care are at issue. If the response is to take the form of enhanced public contribution what specific policy outcomes would be desirable? A major point of this paper is that explicit family policy designed for an aging society must recognize that family development influences both the needs of an individual and the resources available to meet those needs. Policies should reflect this source of family diversity. A second point is that family care frequently means spouse-care or

parent-care delivered by one primary person. These people, as well as their elderly family member, need support through appropriate policy.

1. Policy and the Center of the Care System

Perhaps the core of future policy development must be the recognition of self-care as a practice and potential for older adults (Daatland, 1983). This is consistent with individual preference in many countries, with family development experiences in aging societies and with cultural values and social conditions. Several policy initiatives would enhance self-care. First, public recognition of the production of self-care would improve the image of older people and enlighten policy discussions regarding provision of community resources. Second, public education on ways of caring ranging from health related care (nutrition, appropriate use of medical services) to psychological and social care (recognizing mental health problems, appropriate use of supportive services) would "enhance the capacity of individuals to do for themselves what people have always done" (DeFriese and Woomart, 1983) and would enhance the autonomy of individuals who approach the community care system. Expanding the knowledge and abilities of individuals in this time of social change resulting from demographic transformation is necessary, since successful models for new caring roles are few. Educational programs would also benefit spouses and offspring who may increasingly supplement the aging individuals selfcare. Third, empowering older people to manage their own care systems simultaneously reduces the professional dominance that has quickly emerged in the aging enterprise (Estes, 1979) and holds the promise of greater coordination of services by the most involved individual, the consumer. Existing policies place a diversity of professionals and bureaucrats in control of different aspects of care and it

can be argued that this has led to underutilization of services due to the confusing environment and the lack of individual autonomy.

One suggestion, more workable in some societies than others, is to simply increase the economic resources available to older people so they can choose formal services to purchase or seek informal care without reducing their ability to reciprocate in some way for this care. Economic adequacy is necessary, but not sufficient, to enhance self directed management of care. Organized entities that provide a variety of care resources must also be available for the individual to truly have choice.

2. Policy and Family Care: Spouse and Offspring as Providers

Policy must respond to, not exploit, the family as a limited resource. Non-punitive income maintenance policies, network development projects that help broaden the care system beyond a single caring individual, public payments to core individuals, relief structures such as day care, respite services and hospice, home help of various kinds, support for family surrogates, innovations in housing design and policy, organized communication mechanisms between families and bureaucracies, routine functional assessments of community-dwelling elders and other developments have been suggested to improve the quality of life for both the older person and the family members providing care. (Pilusuk and Minkler, 1980; Daatland, 1983; Praeger, 1978; Kendig and Rowland, 1983; Nissel, 1980; Tobin and Kulys, 1980; Schorr, 1980). These developments need not disenfranchise the older person himself or herself, but they recognize the set of familial relationships in which the individual requiring care is embedded.

Assessment of the outcome of existing and future policies on the family as well as the elder is a necessary component of developing adequate care

systems. Social indicators have taken individual condition as the variable of interest in most cases; social indicators of family condition are necessary in a society where families provide what they can, and sometimes more than they can, to sustain older individuals. Clearly, research is needed on the complex family consequences of caring. Since so much is learned by examining the problems as articulated in other national contexts and the solutions discovered or rejected in other societies, comparative research and "societal learning" (Kahn and Kamerman, 1976) seem fruitful ways to learn more about interface of state policies, family action and personal condition in late life.

3. Communal Aspects of Interdependence

Whether selfcare and family care is supported by policy development or not depends on the sense of collective interdependence. The family has been carrying the burden of care in part because of the inadequate development of this sense of social responsibility for older people. Perhaps income maintenance is seen as "enough" of a public service and medical care a luxury. A test of each of our societies basic premises and promises is facing us. The aging of society may lead to a new dark age of irresponsibility, a retreat into private havens and a demise of public structures of caring. Alternatively, our societies may face the challenges of an aging population by participating in the creative enterprise our families have already begun - building adequate structures of care for our aging members. Older people are currently a surplus population, not yet integrated into our role structure. Whether they are soon to become more comfortably accomodated or whether they are to become a superfluous portion of our societies, pushed to the margins of social existence (Mizruchi, 1982) is a question that faces the makers of policy as well as familia farber.

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Family support networks and public responsibility

by PETER D'ABBS

Introduction

Once, questions concerning the supportive capacities of family networks in contemporary societies were of interest mainly to academic sociologists, amongst whom a debate has been in progress since the 1940s about the degree of structural isolation to be attributed to modern nuclear families. (For a review of major findings, see Lee, 1979 and d'Abbs, 1982: 25-32.) More recently, these questions have acquired social and political significance as a result of re-examinations of the role of the welfare state in general and of personal social services in particular.

The re-examinations have been undertaken from various standpoints, but a recurrent theme has been the importance of informal networks of support, and the need for social policies to provide services which supplement rather than duplicate these networks. In Britain, the recently published Barclay Report (1982) urges social workers to pay more attention to building links with informal care-givers. In Australia, questions concerning the relationship between formal services and informal support have been addressed most directly in the context of care for the aged. A report entitled In a home or at home: accommodation and home care for the aged prepared by the House of Representatives Standing Committee on Expenditure (1982) advances a comprehensive strategy aimed at constraining further growth in the institutional sector and greatly

expanding domiciliary and community-based care: it is the latest in a line of reports which have urged similar policies. The findings of the report (usually known as the McLeay Report, after the chairman of the sub-committee which produced it) have been endorsed by the major political parties in Australia.

As Pinker (1982) has observed, advocates of "communitarian" or localist models of social services in opposition to the orthodox "administrative" model draw on two intellectual traditions: a populist view of society, which sees small-scale collectivism and mutual aid as a superior alternative to centralised state power, and a romantic tradition, according to which the modern state poses a continuing and growing threat to individual self-expression. However, appeals to community and family-based traditions of mutual aid have also proved useful to those conservative politicians and their allies who, from the mid-1970s in several countries, have orchestrated a "welfare backlash" in order to curtail expenditure on social services and, on occasion, identify scapegoats for rising unemployment and other problems brought on by economic recession (Golding and Middleton, 1982). As Graycar points out, one characteristic of what he calls the "retreat from the welfare state" is "a retreat in the legitimacy of claims against the state, and an attempt to steer more claims in the direction of the family, employers, and the local community" (Graycar, 1983:2).

Partly because these moves reflect such a mixture of underlying perspectives and motives, and partly because terms such as "family" and "community" carry powerful ideological and

emotional overtones which are sometimes deliberately evoked in debates, notions of "community care", "family care" and "informal support" have become, if not interchangeable, at least used with little regard to distinctions between them. In particular, the connotations of "community care" and "family care" have become blurred.

The McLeay Report on care for the aged illustrates the point. The report acknowledges that "a major factor in the development of policy for community care is the relationship between formal support services and informal care"(para 3.18). It contends that available research provides strong, if incomplete evidence that informal networks are the most important sources of support for older people. In particular, the report refers to research carried out by the Ageing and the Family Project at Australian National University, a project based on a survey of 1050 people aged 60 and over, living outside of institutions in the Sydney metropolitan area (Kendig et al, 1983). Referring to the project's findings on help with domestic and household tasks, the report states:

> The results of this study show that informal support from family, friends and neighbours is the overwhelming source of assistance. Formal services from Government and voluntary agencies were mentioned by less than three per cent, while privately purchased assistance was common for household repairs (Report, 1982, para 3.20).

Then, in two almost audacious elisions, the "overwhelming" importance of "family, friends and neighbours" is narrowed down. Firstly, the report draws a distinction between those elderly people who have family support and those who do not.

For the former, community services should provide "supplements to available family care, while for the latter "The option of community care based on family support is limited" (emphasis added) and strategies which can "provide a substitute in the absence of family care" are needed (Report 1962, para 3.21).

In the next paragraph but one, we learn who is to provide the basis of family support:

> Changing female participation in the workforce is commonly seen to have an effect on the availability of carers. Generalised comparison between the small and selective group of women as carers and the much larger female workforce are however not particularly informative for policy development. By way of illustration, the number of women aged 30-60 years in the workforce in the 1976 census was 1,117,883 compared to a total population of 211,632 aged 80 years and over. If carers for 20 per cent of the aged group are to be drawn from the workforce group, only four per cent of working women would be affected. This estimate is reduced by the extent to which less than 20 per cent of the aged might need such care and by the number of those carers who are women not in the workforce, such as elderly wives or non-working middle-aged and younger women as well as those who combine caring and workforce roles (Report, 1982, para.3.23).

(The availability of men aged 30 to 60, or any other age for that matter, is not examined.) It is this kind of thinking, as exemplified in similar British policy documents, that has led one pair of writers to remark with acerbity that "in practice community care equals care by the family, and in practice care by the family equals care by women" (Finch and Groves, 1980:494).

Yet whatever meanings we may wish to give to "family" and "community" - and, as is well known, we have a wide range of meanings to choose from - a family is not a community. A

necessary first task, then, in examining the relationship between family support and public policy, is to untangle the notions of "family support" and "community care" and to clarify the relationship of each of these to the institutions of formal service provision. I shall begin by trying to clarify these concepts, then go on to consider empirical and theoretical aspects of the relations between family support and formal services.

Family care and formal services

Terms such as "support" and "care" encompass a range of activities from the relatively undemanding - such as giving a neighbour an occasional lift to a shopping centre - to the provision of intense, prolonged and multi-faceted care, such as that required by some handicapped or frail aged people. These activities can be categorized in various ways, but one of the most important distinctions for policy purposes is between the activities associated with caring about another person and those associated with caring for another (Allan, 1983:426) or, to use Parker's terms, between expressing concern for another, and actually tending them (Parker, 1981:17). The former refers to actions such as lobbying on behalf of another, sharing a colleague's work-related problems, or keeping an eye on a neighbour's house when the latter's family is on holiday. Tending, or caring for another, involves looking after those who, for one reason or another, temporarily or permanently, cannot look after themselves. Fundamental though this

distinction between two kinds of care may be, it is not always acknowledged in discussions about family support. Moreover, much of the empirical research on informal social support, in particular research in the field of community mental health, defines support in terms of actions which reflect concern about rather than care for another.

Depending upon circumstances, care of both kinds may be negotiated through informal networks, or purchased on the private market, or obtained as a result of public provision; in some circumstances, of course, it will prove unobtainable from any of these sources.

Informal networks made up of bonds of kinship, friendship, neighbourly and other ties constitute one of the two main sectors providing care. For analytical purposes, these networks are most usefully thought of as the links which an individual has with his or her kin, friends, neighbours, work colleagues and so on (and, sometimes, as the links among these various others as well). Sometimes an individual will seek help through their network on behalf of the family to which they belong (as when, for example, a mother arranges informal childcare so that she and her spouse can go out). Sometimes, the individual will seek help for themselves alone.

The other main sector providing care is, of course, the formal sector, encompassing agencies administered, funded and/or authorised by the state (Froland, 1980). It includes both statutory services and services provided by voluntary agencies, many of which in Australia receive substantial government funding (Yates and Graycar, 1983).

Straddling these two sectors, attempting to combine into the one system principles characteristic of both, are the various community-based or neighbourhood schemes of service provision. Most such schemes are manifestations of an expressed wish on the part of policy-makers or service-deliverers to bridge the gap between informal and formal systems of service provision. Often they are represented as simple extensions of informal networks; references to community care in the McLeay Report, for example, seem to imply this model. But as Abrams points out, neighbourhood or community care projects - insofar as they have a contribution to make over and above what is provided in any case through informal personal networks - require a rationale of their own:

> . . . in the informal sector people <u>care</u> for the people they care for, but the members of neighbourhood care projects are committed to giving care to people neither they nor possibly anyone else will care for (Abrams, 1979:5).

The extent to which, and the circumstances under which a sense of shared locality constitutes a satisfactory basis for the provision of social services is a question which lies beyond the scope of this paper. What does need emphasising here, however, is the point made by Abrams: a sense of shared locality, whatever its potential, is not to be confused with the sense of obligation based on kinship and friendship which underlies most informal sector exchanges of help.

If we define care or support so as to include both of the kinds of care distinguished above, then it is clear that in

contemporary Australian society, as in most other complex societies, care is provided through a mixture of formal and informal sectors, with neighbourhood caring systems taking a small role in some settings. Research carried out in recent years in several societies points to the validity of two general propositions which, taken together, provide a basis for analysing the relationship between formal and informal sectors. Firstly, contrary to the assertions of some conservative ideologues who compare contemporary society unfavourably to a mythical golden age in the past, families and kin networks have not handed over responsibility for the care of dependent members to the welfare state. Flows of both expressive and instrumental support between and within generations continue to be sustained by powerful social norms, and extended family networks remain widely used as sources of help when households need assistance (Adams, 1970; Kendig and Rowland, 1983; Martin, 1967).

Secondly - and this proposition constitutes an important qualification to the first observation - throughout this century the economic, social and demographic contexts within which family networks attempt to carry out their perceived responsibilities have undergone several important changes, which affect the capacities of kin networks to provide certain kinds of support. Treas (1977) uses U.S. Census data to identify three demographic trends which, she argues, constrain the abilities of families to care for aged relatives: first, changes in mortality and child-bearing patterns mean that, today, proportionately more middle-aged parents themselves have

aged parents while, at the same time, aged persons have fewer children on whom they can call for help than in earlier decades. Second, changes in marriage patterns have led to a decline in numbers of adult unmarried daughters, and these women have historically carried a disproportionate share of the responsibility for aged care. Thirdly, the proportion of married women in the workforce has increased over recent decades. Parker (1981) draws attention to another important demographic trend: rises in numbers both of sole parent families, and of the rate of divorce, both of which are likely to have consequences as yet undetermined for the informal caring capacities of kin networks.

Both of these observations - the continuing importance of kinship-based obligations to provide mutual support, and the combination of economic, social and demographic trends which affect the capacity of individuals and families to fulfil those obligations - have been empirically demonstrated. Beyond that point, however, the role of the informal sector is dimly perceived. While "warm, comfortable slogans" (Parker, 1981:30) about the caring capacities of communities and families abound, empirical data concerning these capacities is less evident. Moreover, several studies which do present evidence concerning the use of informal support networks fail to distinguish between use based on <u>choice</u> on the part of the help-seeker from those situations where the help-seeker perceived himself or herself as having no choice, either because they did not know of available formal services, or because they could not gain access to them, or because no formal services had been

provided.

In the remainder of this paper I shall present four propositions which, I argue, summarise key aspects of both the capacities and limitations governing informal, family-based care.

1. Many day-to-day needs are met through reciprocal exchanges among neighbours, friends and relatives

Most, though by no means all people appear to have some informal supportive relationships. Although differences in sampling and data collection techniques make systematic comparison difficult, this much at least is clear from several studies, among them a survey of 845 adults in East York, Toronto (Wellman, 1979), a more intensive follow-up study of 34 respondents from the first survey (Wellman, 1982), and a survey of 1050 adults from 50 localities in Northern California (Fischer, 1982). (None of these studies, it should be noted, are concerned with family support systems, but rather with "personal communities". However, all of them examine supportive aspects of people's informal networks.)

A study carried out in 1982 by the Institute of Family Studies presents a similar picture. Among respondents drawn from 416 randomly selected households in Geelong, Victoria, it was found that some 4 out of 5 (79.6 per cent) had, over the preceding year, received informal help with one or more of the following functions: provision of transport, help with household repairs, help with housekeeping jobs, help when sick, keeping an eye on the house when the respondent's family was away, help with interpreting or translating, or other similar

services. A slightly higher percentage (86.3 per cent) reported having provided one or more of the same services to others over the same period.

Sources of help received by respondents, and recipients of help provided by respondents, are listed in Table 1.

Table 1: Sources and recipients of everyday service support

Source/recipient	Source of help received by respondents (%)*	Recipient of help provided by respondents (%)*
Parent	12.0	14.4
Child	5.5	2.9
Brother/sister	6.5	4.0
In-law	12.3	9.7
Other family	6.8	8.6
Friend	44.2	49.7
Neighbour	12.2	10.7
Other	0.4	0.1
TOTAL	99.9	100.1

* Percentages based on numbers of services received/provided, not number of respondents. In all, 1118 services were received by 331 respondents, and 1435 services provided by 359 respondents.

At first sight these figures seem to indicate the existence of community networks of friends, neighbours and relatives humming with reciprocated acts of everyday support - the sort of picture often implied in policy documents talking of community care. Closer inspection, however, suggests the need for qualification.

An examination of the three most frequently provided services indicates the existence of a division of labour structured in terms both of type of relationship and gender. The three services provided, and the sources of support, are shown in Table 2 (note that support when ill also included

support in the event of childbirth).

Table 2: Sources of support, three selected types of support

Type of support	% respondents receiving N=416	Sources of support(%)(a) Kin	Friends	Neighbours	Others	Total
Transport	43.0	31.1	63.5	5.1	0.3	100.0
Houseminding	53.6	34.3	33.6	31.8	0.3	100.0
Care when ill(b)	34.9	70.0	25.1	4.8	-	99.9

(a)Percentages based on number of people providing help, not number of respondents receiving help. Totals are: transport, 312; houseminding, 289; care when ill, 227.
(b)Also included help in event of childbirth.

In the case of transport (the question asked respondents to name up to 3 people who provided transport or "help drive you places") some two-thirds of the people providing the support were friends, with kin providing most of the remaining third. For houseminding, by contrast ("who helps look after your house when you are away") kin, friends and neighbours each provided a similar share of support. This was in fact the only function in which neighbours were prominent: that they should be so in providing this service is not surprising, for two reasons. Firstly, propinquity is obviously an advantage for anyone asked to keep an eye on a home. Secondly, this sort of service imposes few demands, is easily reciprocated and does not require intrusions into the recipient's personal life or the divulging of personal information. As such, it fits readily into what seem to be near universal norms governing neighbour relations in urban society: being friendly, but not <u>too</u> friendly.

When we look at help in the event of illness or childbirth

a very different picture emerges: 70 per cent of the help was provided by kin, with friends providing most of the rest. Depending on the severity of the illness - and this survey question did not discriminate among levels of severity - care of this sort is likely to entail obligations associated with caring for someone, rather than simply caring about them. That is, the obligations are more intensive, they involve intrusion into one's personal space, and they may pose problems for the person who feels under an obligation to reciprocate. In short, they involve a shift from low to higher levels of need and obligation. Again, it is hardly surprising that kinship relations come to the fore under these circumstances: one of the characteristics of kin relations is that the norms of reciprocity, which in one form or another govern flows of resources in most social relationships, are not so binding, either in terms of amounts of help or in terms of the time between help being extended and reciprocated.

But, as other observers have noted, it is not just any kin who provide informal support. Listed below are the female: male ratios among persons providing the three kinds of service.

Service	Female:male ratio
Transport	1.15:1
Houseminding	1.32:1
Help when ill/childbirth	0.30:1

Among providers of both transport and houseminding, women are slightly more in evidence than men, a reflection, perhaps, of their generally higher level of involvement in local

informal networks. But in the provision of help in the event of sickness or childbirth, the disparity is so marked as to require little comment: the bulk of responsibility is clearly taken by female kin.

These findings obviously warrant further exploration, but for present purposes they highlight, I suggest, two things: first, informal support networks do not consist of undifferentiated collections of friends, relatives and neighbours who can be used interchangeably to provide support; secondly, although most people do appear to have some supportive relationships, most friends and (even more so) neighbours only play a significant part in the provision of low-level, easily reciprocated services. For more intensive needs, the pool of providers tends to narrow to the point where it is dominated by female kin. This is a point to which I shall return below.

2. The presence and nature of informal support networks has a bearing on people's ability to cope with crises.

It is this property, imputed to informal networks, that has attracted most attention from social scientists, and it is the one I shall dwell on least here. A number of investigations have been made of the effects of informal networks on people's response to various crises, such as unemployment, bereavement and myocardial infarctions, as well as on their mental health (see reviews by DiMatteo and Hays, 1981; d'Abbs, 1982:9-23). Several writers (e.g. Pilisuk and Froland, 1978; Kaplan, Cassel and Gore, 1977, and Ferguson, 1979) have concluded, on the basis of studies already carried

out, that the incidence of suicides, homicides, car accidents, alcoholism, tuberculosis and schizophrenia - to name just a few examples - can all be related to the presence or absence of informal support networks. However, the findings on the whole are suggestive rather than conclusive. DiMatteo and Hays (1981) review several studies linking informal social support to responses to serious illnesses, and conclude on a cautionary note by suggesting that we still know little about how social support operates. Fischer (1982:126) points out that many studies are marked by methodological problems; properties attributable to support networks may, he argues, have been overstated.

3. Under certain circumstances, informal support networks may not be available to meet either low-level, everyday needs or crises.

A number of attempts have been made to identify families or individuals who, in informal network terms, are "at risk". In a major review of social services to families in Australia, the Family Services Committee identified several categories of "vulnerable" families: large families, one-parent families, families with a chronically ill or handicapped member, migrant families, Aboriginal families and families in remote areas (Commonwealth of Australia, 1978:29-102). The Committee's contention was not that all families in these categories were abnormally dependent upon social services, but rather that particular circumstances giving rise to vulnerability were more likely to be present in these than in other families. Approaches such as this, accurate and useful though they may be

for actuarial purposes connected with service delivery, do not explain how some people, but not others, are able to build and use informal support networks.

This task, as Eckenrode and Gore (1981) point out, requires a different approach, one based on examining the processes underlying the formation, maintenance and use of informal support networks. Elsewhere I have argued, on the basis of an in-depth study of 20 respondents and their support networks (d'Abbs, 1983:151-218), that the informal arrangements which people enter into are to a large extent governed by their needs or goals and by the resources at their disposal. I shall describe briefly how these two factors affect support-seeking; a more detailed account can be found in the study referred to above.

Needs and goals (and, insofar as the underlying model of human action here treats action as goal-directed, the terms are interchangeable) vary according to their predictability, the extent to which they can be clearly defined, and the degree to which they involve important facets of the self-identity of the person concerned. Each of these criteria affects the kinds of informal arrangements that people enter into. Needs or goals that are predictable in their occurrrence, that can be expressed in terms of fairly clearly specified tasks or services, and that do not involve "personal" matters, lend themselves to being pursued through informal relationships. Their predictability and clearly bounded nature make them compatible with the norms of reciprocity that govern most relationships, and there is little risk of obligations getting

out of hand. The absence of highly personal connotations means that there is little risk of the help-seeker having to expose more of themselves to the provider than they might wish, an important consideration in many relationships, particularly those lying outside a person's intimate circle.

Needs that tend to be unpredictable, that are difficult to define and contain within specified tasks or services, and/or that are personal in nature have very different implications for the person affected. The person facing these circumstances may want help, but cannot say with confidence when that help will be required, or precisely what it will involve; nor is he or she in a position to enter with any confidence into arrangements to provide reciprocal services, because their own unpredictable needs may prevent them from honouring commitments. Moreover, the seeker of help must be prepared to expose aspects of their self-identity which they might wish to conceal, or at least to reveal to none but a few. Not surprisingly, people faced with these circumstances are usually reluctant to seek informal support from all but a few chosen relationships. Most informal relationships cannot long bear the weight of unpredictable, ill-defined demands being made by either party. The fact that most people are well aware of this usually makes them reluctant to risk imposing such demands.

Only two kinds of relationships do lend themselves to being invoked in these situations: primary kin relationships, and - for some, at least - very close friendships, where it is precisely the right of either party to ask for support that goes beyond the norms of reciprocity that characterises the

relationship.

What these criteria mean in concrete terms is that needs like borrowing an electric drill for next Saturday, arranging babysitting in order to go to the concert on Thursday, having the house minded while the family take a holiday, lend themselves to negotiation through informal networks. The needs of a parent whose child is prone to serious asthma attacks in the middle of the night, of a woman whose husband is likely to attack her whenever he gets drunk, or of a family with an empty fridge are not so easily negotiated. Few members, if any, of the person's informal network can be comfortably turned to, and those few members - precisely because they are so few - are already likely to be carrying a heavy burden of caring.

The same point can be put slightly differently: those who already have a relatively high degree control over their day-to-day lives are in a position to take advantage of that control by entering into exchange arrangements involving a variety of relationships. Moreover, they are well placed to disperse their arrangements among several relationships, thereby avoiding becoming excessively reliant on any one member of their network or over-burdening any one relationship. Those with less control over their everyday lives - those, that is to say, who are more likely to be caught up in responding to and coping with crises as they occur - lack these options.

Such control, as I have suggested, is partly a function of the predictability and the degree of specificity of needs; it is also a function of resources available. In order to maintain supportive relationships - at least, outside of the

realm of primary kin - one must be able to contribute resources to them, such as time, skills or material goods. Those lacking resources are thereby at a disadvantage in building support networks. It is difficult to ask for help unless you are confident of being able to give help in turn, and it is practically impossible to give help unless you have some valued resource at your disposal. (Mitchell and Hurley (1981:292) draw attention to some empirical evidence in support of this proposition; most of the evidence referred to, however, concerns psychosocial rather than material resources.)

Resources are usually exchanged on a person-to-person basis, but sometimes the nuclear family functions as the unit of exchange. One woman in my own study could call on several other women in the neighbourhood for various kinds of childcare because her husband, a rooftiler by trade, had helped these other families in their house renovations. The husband's occupation, as well as providing most of the family income, was also part of the family's repertoire of social resources.

Access to resources may also, under certain circumstances, enable the possessor to bypass the sometimes subtle combinations of obligations and power-relationships entailed in informal co-operation, and obtain needed support formally, by simply purchasing it or first surrendering a resource and then purchasing. (Another woman in my sample had arranged to pay one of her friends in the neighbourhood to provide a few hours of regular childminding each week. She did this, she said, so that she could count on the arrangement as a fixed one, not subject to constant renegotiation or balancing up, and also so

as to avoid having to reciprocate in kind.) Obviously, this option is not open to those lacking access to resources.

Taken together, these observations imply that informal support is likely to be least readily available to those whose needs are greatest, and whose access to resources is most deficient. To place undue reliance upon informal family support, therefore, is to risk exacerbating social inequalities.

The nature of needs and access to resources do not, together, account for all variations in informal support networks, but they constitute two key constraints, within the bounds of which other factors, including personality variables, play a part. Where the dominant needs are predictable, easily specifiable and not-too-personal, and where the person concerned has a high level of access to resources, circumstances are conducive to the trading of services and goods through informal networks. Where either of these sets of conditions is absent, it becomes extremely difficult to sustain informal supportive relationships outside of a small, restricted network, normally consisting of one or two primary kin - upon whom it may be emotionally painful to rely for help - plus one or two very close friends, from whom nothing need be hidden.

To this point the account has focused on attributes of individuals, since it is individuals who either do or do not enter into informal relationships. The distribution of both factors, however, is socially structured. Patterns of needs, for example, are strongly influenced by the gender division of

labour, according to which women arrange childcare and attend to the personal needs of aged relatives while men knock down walls and build bookshelves. The distribution of resources, as is well known, is a function of differentials in income, education, health, occupational "perks", etc. The structure of both needs and resources is also affected by factors such as stage in the family cycle (Richards and Salmon, 1983).

4. Needs that involve sustained, intensive care are not likely to be met on an informal basis except by primary (usually female) kin.

This proposition is implicit in much that has gone before: it is suggested empirically by the data on support in the event of illness, discussed above, and theoretically by the preceding brief account of constraints governing support-seeking. It is also borne out empirically by other studies, many of which - with respect to care for the aged - are reviewed by Karen Altergott (1984) in her paper to this conference.

Ironically, it is also borne out by the recent Australian study on ageing and the family - the same study cited by the McLeay Report as evidence of the strength of informal networks. (In fairness to the authors of the Report, it should be noted that the Report was tabled in 1982, while the main report of the Ageing and the Family Project was not published until a year later.) As the McLeay Report noted, most of the support obtained by the 1050 elderly people interviewed came from the informal sector - although only a quarter of the respondents were receiving substantial amounts of support from any sector (Kendig et al, 1983:112). Most informal support came

from family, with neighbours accounting for only a small proportion in any areas of need, and friends playing a major role only in the provision of transport - as they did in the Geelong study of non-aged adults, quoted above. In the most demanding area of support - personal care - friends, neighbours and (apart from male spouses) even male kin played a minor role; the bulk of care was provided by spouses, daughters and daughters-in-law (Kendig et al, 1983:Chapter 5). Moreover, in two-thirds of the cases where the respondent was receiving personal care from someone other than their spouse, all of that care was provided by one person (Kendig et al, 1983:123).

Some indication of the costs to the care-givers of such concentrated, intensive care comes from a study of the principal carers of 75 elderly people in Sydney and Hobart reported the following effects, among others, on the carers (95 per cent of whom were women):

- 79 per cent had less time for recreation and leisure activities;
- 56 per cent experienced a deterioration in their relationships with spouses;
- 60 per cent were less able to relax and sleep at night;
- 90 per cent reported a deterioration in relationships with their brothers and sisters; and
- 50 per cent experienced a decline in their general emotional state (Kinnear and Graycar, 1982).

(Although the study also recorded positive effects, these were much less evident.)

References to informal networks of family, friends and neighbours sometimes convey a picture of various network members rallying around and sharing the responsibility for caring when the need arises. Such "pitching in" often occurs for a limited period in the wake of natural disasters such as floods and bushfires, and no doubt at other times also. Unfortunately, however, the evidence suggests that in less exceptional times this is not the way informal networks usually work.

Conclusion

In terms of policy implications, then, I suggest that four conclusions follow from the above analysis. Firstly, the informal support sector clearly plays an important part in what one observer has called "the social organization of tending" (Parker, check on this). Its role, however, is subject to limitations. In particular, friends and neighbours are most prominent in the less intensive areas of need; once the intensity of need increases, the pool of informal supportive relationships tends to narrow to a point where a major burden is often borne by one or very few relatives - usually female relatives - of the person in need. Secondly, because the availability of informal support is governed by the needs and resources on which would-be help-seekers can draw in order to sustain supportive relationships, reliance on informal care tends to add to the disadvantages of those already disadvantaged.

Thirdly, the informal sector does <u>not</u> provide a ready-made

basis or framework for community or neighbourhood based systems of service provision. Informal care is characterised by the norms and values associated with kinship and friendship, and these are not the same as the norms governing neighbour relations. This is not to suggest that neighbourhood or community systems have no role, merely that they cannot be grafted onto informal support networks.

Finally, the existence and, for some purposes, undoubted strengths of the informal sector do not constitute a legitimate vehicle to justify curtailment of formal social service provision. On the contrary, informal networks of support can only be expected to function effectively - to the benefit of the givers as well as receivers of care - if these networks are in turn supported by adequate formal provision.

Attempts to link formal service provision with informal family support must take account of the constraints and limitations, as well as the capacities, that go to make up family support.

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Social change and support of the Australian aged: individual, family and government responsibilities

by HAL KENDIG

Introduction

Remarkably little is known about the impact of social change on support of older people. One view is that modernisation increases the numbers of the aged while at the same time denying them a useful place in a technologically advanced economy - the result is a devalued status and social abandonment (Cowgill and Holmes, 1972). A related set of literature suggests that older people are being estranged by the atomisation of traditional extended families, and the emergence of isolated and mobile nuclear units serving only young children and spouses (Parsons, 1954). In the context of these broader changes, government is said to be the only institution left to meet the shortfall of support, and has perhaps accelerated the trends by displacing family support (Glazer, 1971). These gloomy interpretations accord well with popular opinion, yet empirical confirmation of the modernisation hypothesis has been forthcoming only from cross-sectional comparisons of countries at different levels of development.

The bulk of the evidence on advanced countries would appear to refute the modernisation thesis. The 'good old days' of pre-industrialised society apparently were not so easy for older people (Laslett and Wall, 1972), and popular images of an idealised past emerge out of complex wish fulfillments (Nydeggar, 1983). Countless studies have documented the continued strength of family support, albeit in the form of modified extended families more than joint households (Shanas et.al, 1968; Sussman, 1976; Troll, et.al, 1979; Bengtson and De Terre, 1980). Others have suggested that the emergent cohort of older people have greater private resources and political power (Neugarten, 1974), and that the aged are a newly liberated group having strong rights based on age alone (Baum and Baum, 1980).

Which of these polar extremes best applies in the case of Australia? The country has long had many of the characteristics commonly associated with modernity: a heavily urbanised population, high standards of living, and a predominance of the tertiary sector in the economy. Recent decades have witnessed an acceleration of many aspects of social change, most notably the substantial growth of public intervention. The impact of these changes on support of older people has obvious and direct implications for the young and old alike, and for the further development of government policies. An understanding of the Australian experience also expands the empirical base from which more satisfactory theories can be developed on social structures and ageing.

With these goals in mind, this paper provides a review of social change and social support of the Australian aged over the second half of the twentieth century. There are a variety of avenues for transferring resources between generations - including individual savings, family reciprocity, and public redistribution - and sections of the paper address the changing and interrelated roles of each of them. The discussion also considers the diversity among people who have different backgrounds in midlife and different experiences in old age. The findings provide some insights into the social processes which bind the generations together, and reveal some of the distributional consequences for different groups among the young as well as the old. An age and generational dimension to social inequality is shown to parallel and interact with other inequalities apparent between the genders and social classes.

The primary information source is a 1981 survey which examined intergenerational transfers over the life times of 1050 older residents in Sydney.[1] By asking respondents about the support of their parents during old age, the study provides some insights into both historical change and contributions over the entire life cycle. Other questions pertain to past and current exchanges with the respondents' own children, and the characteristics of

these children. These findings and demographic projections form the basis for anticipating possible developments in intergenerational transfers over the remainder of the century. Many important questions remain unanswered and some of these are mentioned as priorities for future research.

Individual Resources and Needs

Population ageing is one of the most notable features of modernisation, and it inevitably increases the demand for transfers from the middle to the older generation. Compared to North America, and especially to Europe, Australia has a younger population which is ageing at a slower pace. The proportion of the population aged 65 or over rose slightly from 8.0 per cent in 1947 to 9.9 per cent in 1982, and is expected to rise more rapidly to 11.7 per cent by the end of the century (Australian Bureau of Statistics, 1982). Australia has been experiencing declines in birth rates, and increases in life expectancy in old age, but these changes are being counter-balanced by sustained immigration of adults of working age (Rowland, 1981). Not until the second decade of the 21st century will the country have an the age structure similar to the ones now found in most European countries.

The potential for intergenerational dependency among older people is based on far more than bare demographic facts. Retirement, which has emerged along with increasing affluence and labour surpluses over the twentieth century, is one of the foremost bases for the social construction of old age. The age at which Australians leave the labour force has declined steadily over the 1950s and 1960s, and sharply since the early 1970s; the trend is expected to continue through the 1990s (Bureau of Labour Market Research, 1983). If retirement is taken as the principal marker for entry into old age, the numbers of the elderly are increasing at a far faster pace than would be indicated by demographic change alone.

The explanations and consequences of these trends differ sharply between different groups of workers. Retirement can prove to be liberating for those enticed out of the workforce by improved superannuation benefits; nor is there any notable intergenerational dependency if the costs are met by the employee, the employer, and taxation concessions during mid life. By way of contrast, manufacturing workers forced onto government pensions by change in the economy do fit the abandonment interpretation of the modernisation thesis. The economic dependency associated with ageing is highly variable and is shaped by both class backgrounds and prevailing economic circumstances.

Notwithstanding the current economic downturn, there is a long term trend toward greater potential for economic self sufficiency among the aged. In Australia, fully three quarters of older people currently are home owners; home ownership rates of the aged have risen substantially over the post war years, and will continue to rise slowly in the decades ahead (Kendig, forthcoming). Superannuation benefits are less widespread but coverage is increasing sharply.[2] Both home ownership and superannuation enable many within the current and prospective generation of the aged to draw on resources accumulated earlier in life during the post war economic boom. They provide distinct advantages over previous cohorts, and continue class inequalities after departure from the labour force.

Dependency among the aged can also result from an inability to manage the tasks of daily living. It often is not appreciated that only 15 per cent of the aged are substantially disabled (Gibson and Rowland, forthcoming). Moreover, information on the last generation of the aged - most of whom died in the 1950s or 1960s - suggests that less than a third of them ever needed a substantial amount of care for a year or more.[3] A period of prolonged personal dependency in old age emerges as an unpredictable risk rather than a certainty or probability. The risk is greatest among women, and is greater among those having fewer financial resources (Kendig, et.al, 1983).

At an aggregate level, however, it is clear that requirements for care of the aged have been rising far more rapidly than the older population as a whole. The lengthening of the life span and other demographic changes are leading to especially large increases of the oldest and most disability-prone age groups. While a third of the older population is now aged 75 or over, the proportion is expected to reach nearly 50 per cent by the turn of the century (A.B.S., 1982). It seems unlikely that better medical care and healthier life styles are reducing disability rates as much as mortality rates.[4]

Within certain limits, increasing affluence should enable more older people to remain substantially independent by purchasing assistance rather than relying on family and government services. Having a higher income does increase the proportions maintaining independent households, and substantially increases the use of paid help with household tasks and transport (Kendig et.al, 1983).[5] But only the very wealthy can bring to their homes the more intensive commercial services which could substitute for co-resident support or residential care. The growth of private retirement homes is providing for more of the middle classes but boarding homes for the poor have been declining sharply (House of Representatives Standing Committee on Expenditure, 1982; Committee of Inquiry into Resident Funded Retirement Villages, 1984).[6] Only the affluent can buy guaranteed life long care, a practise which departs substantially from the usual pattern of family care and inheritance.

In summary, the consequences of demographic ageing are being accentuated by sustained trends toward earlier retirement and greater longevity. Although most aged individuals are unlikely to experience prolonged and substantial dependency, the demographic changes will certainly increase the overall demand for care. Conversely, most aged individuals rely at least partially on some form of income support, but increases of their private financial resources are likely to decrease the need (if not the demand) for such transfers. The most notable impact on intergenerational relations is likely to be forthcoming from

the marked widening of the age and financial spectrum amongst the aged over the coming years.

Older Couples

One of the dominant themes in functionalist sociology (Parson, 1954) is the increasing self reliance of nuclear families. Among the aged in Australia marriage does provide one of the primary bases for receiving intragenerational support, and warrants more attention than it has received in the literature to date.[7] As long as the marriage remains intact, older spouses generally have two pensions and an adequate standard of living, and evince a large measure of mutual commitment and support. In most cases, the disability of one spouse results in a substantial redistribution of responsibilities within the household, and the couple remain independent of instrumental assistance provided from outside the household (Kendig et.al, 1983). This support appears to be inherent in the marital bond, rather than any gender role, for older husbands and wives are equally likely to be assisting a disabled spouse. Although no definitive evidence is available, an early Australian study (Hutchinson, 1954) suggests that older husbands may have been less helpful to disabled wives in the past.

The households of vulnerable older people confirm the importance of support between spouses. The 1981 Census shows that, among people in their seventies, widows are three time more likely than married individuals to have disbanded their own households (30 per cent as compared to 10 per cent).[8] Although the never married may well be adjusted to managing on their own, their financial and social supports are limited and they are even more likely to live in another's household or in an institution (43 per cent).

However effective the marital bond may be in providing support, it is by no means universally available in old age. Among the current generation of older Australians, a substantial minority have never married (8 per cent), or have had

their marriages disrupted by widowhood (37 per cent) or separation or divorce (4 per cent).[9] Moreover, such a small unit, in which the interdependence is with another aged person, can prove to be fragile during the most vulnerable years. Among disabled older people in the community, only a third have the potential support of a co-resident spouse, and a substantial number of these are themselves disabled (ibid). Ongoing care of an ailing husband or wife can have its satisfactions but there are considerable risks of inadequate care and intolerable stress. The nuclear family clearly cannot play a major part in providing support for most disabled older people.

The eventual breakdown of the marriage brings to the fore the gender differences in intragenerational support. As long as the dyad remains intact, men and women generally do share their economic resources, family bonds, and personal skills.[10] Older wives, for example, are no more likely than husbands to be in institutions.[11] But the impact of marital dissolution is much more likely to fall on women than men. Of the vulnerable group aged 75 or over, fully two thirds of the ever married men remain with spouses, as compared to only a fifth of ever married women. Women outnumber men by two to one in institutions. They also comprise fully 90 per cent of the aged in the community who experience the 'triple jeopardy' of having a substantial disability, no spouse, and a low income (ibid). While older husbands can rest reasonably secure in their marriages, women must cast a foreward eye to the day when intergenerational support may become a necessity.

Both sexes are disadvantaged by widowhood. Widowers in their seventies are slightly more likely than widows to have disbanded their own household (52 per cent to 46 per cent) and to reside in institutions (13 per cent versus 9 per cent), presumably because some men are not able to handle household responsibilities.[12] Yet among those who remain in the community, widowers generally are able to manage the traditionally female tasks on their own, while many widows rely on others for assistance with transport, gardening, and minor

home repairs (ibid). Both sexes are substantially hindered by the adjustment from two pensions to one pension, but some women also lose their husband's superannuation. A complex of gender stereotyped roles, government policies and superannuation practises exacerbate the difficulties of widowhood.

A comprehensive review of demographic change (Rowland, forthcoming) shows increasing proportions of couples among people entering old age over the post war years and the coming decades. The generation which formed the post war marriage boom is now reaching old age, and the survival rate of both sexes has been increasing. Offsetting these trends, however, is the rising rate of divorce and separation, and the disproportionate lengthening of older women's life expectancy relative to men. The growth of the number of very old widows has been especially rapid and will continue over the remainder of the century. For the most vulnerable older people, support from spouses is likely to be less available in the future.

Changing relationships between spouses could also have an important bearing on the self reliance of the marital dyad. If marriage becomes a voluntary and revocable bond - as seems to be the case among many younger couples - there may be less committment to provide unreserved support 'until death do us part'. Alternatively, a relaxation of gender stereotyped roles could ease the adjustment to spouse support and independent widowhood. These possibilities are plausible and have important implications, yet remain virtually unexplored in the literature.

Parent Support

As in most comparably advanced countries, the extended family in Australia has become a long and thin structure having relatively few members in each of the three or four generations (Rowland, 1981). Over 80 per cent of older Australians do have living children, most of whom live nearby and are in a relatively resource rich stage of the life cycle (Kendig, 1983). Whether or not

older people can draw extensive support through the lineage depends on the strength of family obligations between as well as within nuclear families. If intergenerational family bonds were becoming voluntary, based solely on emotional closeness or direct and current reciprocity, an important avenue of potential support could be blocked for many of the dependent aged.

Before delving into social change and family support, it is useful to summarise some of the basic features of intergenerational relations at present (Kendig and Rowland, 1983). In most lineages, the older and middle generations are fully self sufficient, and family serves important expressive and social purposes. Financial support is rare, and usually flows in small amounts downwards in lineages. Instrumental assistance typically involves a moderate amount of two-way interdependency, particularly between older married women and their middle-aged daughters. Only 12 per cent of older Australians currently live with a child, and a third of these are in households headed by the parents. These patterns indicate considerable separation between the generations.

There is little evidence, however, of any widespread abandonment of older parents by their family. Fully 70 per cent of the seriously disabled older people remain in the community, with most receiving extensive support from adult daughters and other children (ibid). Having children substantially reduces the risk of institutionalisation.[13] The provision of sustained, one-way support to the dependent aged, primarily through co-residency, thus remains a feature of contemporary family life. The strong sense of family responsibility is invoked only under the relatively infrequent instances when it is necessary.

Information on the past generation of older parents (now deceased) provides further insights into family support.[14] One of the findings is that less than half of these mothers and a third of these fathers had lived with any of their children for a year or more during their old age. Yet among the minority of mothers who had required substantial care for a year or more, fully two thirds

had a sustained period of residence with a child. This further confirms that long-term co-residency with a child was seldom required for care purposes, but was generally available in the event that the need did arise.

The other pertinent finding is that co-residency amongst the past generation of the aged was not usually associated with a need for sustained care. The majority of aged parents who had been in multigenerational households had not required substantial care for a year or more. Companionship, indirect income support, and modest amounts of instrumental assistance apparently were the primary reasons for living with children. In many instances, there probably was an interdependency between the generations, or a dependency by the adult child on the aged parent. It is worth noting that many of these joint households would have been formed during the housing shortages from the 1930s through the early 1950s.

This historical material provides the context within which to interpret the apparent reduction of multigenerational households over the post war years.[15] Rather than indicating any increased amount of abandonment by family, it is likely that more older people have been freed from the poverty and tight housing markets which necessitated co-residency in the past. Moreover, the emergence of widespread ownership of cars and telephones has facilitated social contact and instrumental support within modified extended families.

The implications of the evidence shifts somewhat when viewed from the perspective of a middle aged child rather than an older parent. Although 80 per cent of the current generation of older people had a parent who survived into old age, less than a third had ever provided either a home or substantial care to an aged parent or a year or more.[16] The explanations lie in the considerable self sufficiency of most older people until very near to death, and the possibility that another child had taken on the responsibility should a need for care arise.

These findings show that there is no simple and predictable pattern of parent support in mid life followed by support from one's own children in old age. Most people, including those who make intergenerational 'payments' in mid life, are unlikely to require significant returns in their old age. Conversely, those who do have extensive family support in old age are unlikely to have provided it in earlier years. For example, only 14 per cent of the aged now living with their children had provided comparable support to their own aged parents. The need to either provide or receive intergenerational care thus emerges more as a 'conditional risk' than as a certainty.

Very little information is available to examine the extent that parent support is provided as reciprocation by children for their early nurturance and eventual inheritance. Qualitative studies (Carter, 1983; Day, forthcoming; and Minichiello, in progress) suggest that these contributions are involved in subtle negotiations of support between the generations. The quantitative survey, however, shows that support from children is inversely related to either past financial contributions to children, or the likely size of the estates. The apparent explanation is that support by children relates more to the need of the parent than any likely payoff for the child. The survey findings are only suggestive but are not consistent with any narrowly conceived exchange interpretation of family support (Sussman, 1976). Definitive answers would be forthcoming only from carefully designed studies of the motivations of middle aged children, and inheritance patterns - neither of which have been carried out in Australia.

The weight of the evidence appears to support a normative basis behind children caring for aged parents. Although past and future contributions are part of the patterns of family reciprocity, receiving support depends primarily on need. Older people believe in self sufficiency yet most have a qualified acceptance of family support should it become necessary.[17] Similarly, a sense of filial responsibility - and a lack of any more desireable arrangements - are

the primary motivations for adult children who care for their older parents (Carter, 1983; Graycar and Kinnear, 1982). The importance of duty and obligation in Australia accords closely with the findings of various overseas studies (Adams, 1968; Hill, et.al, 1970).

The limited element of exchange in parent care adds to the psychological difficulties in this delicate relationship. Many individuals are not prepared by any immediate family experience for either providing or receiving parent care - further evidence in support of Rosow's (1974) findings of inadequate socialisation for old age. While many old people receiving care may have been willing to provide it to their parents, few would have actually done so, and thus had the solace of accepting current dependency as reciprocation for past contributions. Their only currency is providing approval and compliance, which can be difficult in circumstances of helpless and role reversal (Sussman, 1976). These and other complications induce some older people to refuse support even if it is needed and available (Day, forthcoming).

The psychological complications also extend to the providers of care. They would be well aware that most of their age peers had escaped these responsibilities, and that their current contribution provides no assurance of eventual reciprocation should they too become dependent in the future. If the norms of family obligation were to give way to a greater sense of social utilitarianism, there could well be a lessening of parent support, and greater tension when it is forthcoming.

Parent Support and Distributive Justice

Reliance on family for organising intergenerational transfers raises a number of questions regarding social equity. The lack of correspondence between providing and receiving help conflicts sharply with commonly accepted principles of distributive justice. Another problem pertains to the limits of extended families. Nearly 20 per cent of older people have no adult children, and some

children are unavailable due to geographical distance, competing responsibilities, or family disagreements. In contrast to the norms for supporting young children, family obligations with regard to parent care are by no means universally accepted, and the limits are not very clear.

Even when substantial informal support is forthcoming, the difficulties often are transferred from the older person to the carer. While modest needs typically are met by a diverse range of sources, intense support is usually provided by a single co-resident. A stressful load can thus fall on but one child for a number of years in late middle age. Although there can be offsetting satisfactions, parent care exacts a substantial toll in terms of emotional distress, family tension, loss of leisure time, and forced departures from the labour force (Kinnear and Graycar, 1982).

The inequalities are likely to fall especially heavily on the small minority who never marry. As compared to their ever married counterparts, never married old people are much more likely to have lived with one of their own aged parent earlier in life (77 versus 24 per cent), or to have provided one of them with substantial care (44 per cent versus 16 per cent).[18] Never married children also shoulder a disproportionate share of the support of the current generation of the aged (Kendig, 1983). Responsibility for parent care thus is taken disproportionately by those who have fewer competing family obligations in midlife, but who also have little potential for family support in their own old age.

Gender adds a further dimension to the unequal distribution of the costs of intergenerational family support. Elderly women are more likely than men to have previously had a co-resident aged parent (31 per cent to 21 per cent), and much more likely to have provided substantial care to one of them (24 per cent to 5 per cent).[19] With regard to current support of the aged, sons and daughters are equally likely to be co-resident or provide a small amount of

assistance (Kendig, 1983). Daughters, however, still predominate by a two to one margin among those who live with a disabled parent, or who assist with any major household tasks.[20] The gender bias in parent care may be lessening slightly but it remains sizeable.

Women also are more likely to receive care, but the matriarchial patterns still disadvantage them. Sons generally provide substantial parent support only if they are not married, while a number of married daughters provide support; the differences remain irrespective of employment and child rearing responsibilities (ibid). Rising labour force participation among married women heightens the difficulties, by adding to the stress of providing support or by reducing the availability of support.[21] Only women have a substantial risk of being a provider in mid life, and of not having necessary support in old age.

The greater contributions made by women down the generations, in nurturing children and maintaining family relations, appear to yield disproportionate returns only in the case of divorce. While widowers aged 75 or over are as likely as widows to live with children (18 per cent), divorce or separation sharply reduces co-residency with children for men (7 per cent) but slightly increases it for women (22 per cent).[22] In the event that the marriage of parents breaks down, adult children tend to side with the mothers, who generally were the ones who had reared them and kept in touch with them. These findings suggest that childrens' sense of responsibility to aged parents is related in a general way to nurturance earlier in life.

Social class may accentuate inequalities in older people's personal resources but it ameliorates them slightly in the area of intergenerational support. Amounts of support are inversely related to the parent's class position but are positively associated with the class of the child (ibid). More sons in higher status occupations have mothers in their homes, and more of them provide them with traditionally female kinds of assistance. The pattern appears

to fit the norm of 'noblesse oblige', coined by Hill et.al (1970) to explain redistribution from more advantaged to less advantaged members of families. These kinds of transfers may be becoming more common, because the influence of class does not emerge in the provision of care to the past generation of older people.[23]

Inheritance is the one area in which very large transfers are made downwards from the aged to their children. While education may be replacing land ownership and family capital as bases for economic achievement, it is equally true that subsequent cohorts of older people are leaving larger estates. If larger inheritances were to be made primarily to those who had cared for the deceased, or to those who had greater financial need, there would be a measure of social equity and progressive redistribution. It seems more likely, however, that most estates are simply divided equally between the surviving children. The primary distributional effect of inheritance probably is to heighten inequalities between lineages.[24]

There are, of course, numerous other cleavages by which to consider the equity implications of intergenerational transfers. Ethnicity, for example, is a major and complicated topic in its own right.[25] There also are a number of important questions regarding interactive effects between the characteristics of different family members, such as the consequences of downward or upward mobility by children, cross sex and same sex intergenerational bonds, and the factors among sets of siblings which lead one child rather than another to provide parent support. These are interesting areas of future research yet no further evidence is required to document the basic point: the consequences of family support fall very unevenly on different individuals as both providers in midlife and recipients in old age.

Parent Support and the Future

What then is the likely future of support for the aged through families? While demographic patterns by no means determine behaviour, they do in broad terms set the limits for intergenerational transfers. In a comprehensive analysis of this topic, Rowland (forthcoming) points out that the availability of children has been increasing slightly for recent generations of older people, because more of them have had at least one child, and more of these children have survived through their parents' old age. The 1980s, however, are seeing the emergence of a relatively deprived cohort of older people whose childbearing had been reduced by the depression years. As a result, a quarter of the older women now in their mid to late seventies do not have any surviving children. The proportions of childless older people will begin to fall toward the end of the century, as the generation which bore the post-war baby boom reaches advanced old age.

The picture is less optimistic when considered from the vantage point of adult children. Their chances of having parents and parents in law who survive to age 75 or more are expected to rise appreciably. Increasing numbers of middle aged couples thus will face the potential demands of parent care, and the numbers of their siblings is not increasing as quickly. While the rising economic resources of older people may reduce some of the demand for co-residency, the pressures for companionship and care are likely to increase along with the expected growth of disabled widows. The overall situation indicates an increasing demand on - if not provision by - the middle generations.

The family structure of the middle generations appears unlikely to change in ways that would reduce intergenerational transfers. Although rates of divorce and separation are rising, previously married children now are more likely than married children to support dependent aged parents (Kendig, 1983).

As with the many never married children in previous generations, intergenerational co-residence in these circumstances can provide financial and social advantages for both parties. The increasingly earlier departure of teenage children from their parents' homes should reduce instances of middle aged people having major commitments to children and parents at the same time.

Rising labour force participation of middle aged women is another predictable change over the coming decades. In the current and past generation, employment of daughters has increased the stress of providing parent care more than it has decreased the availability of support (ibid). The one substantial proviso here is that, if a parent requires intense care, daughters (but seldom sons) can face the dilemma of either leaving work or placing a parent in a nursing home. This may become an increasingly difficult 'choice' for new generations of women who have worked in better jobs throughout their adult years. These decisions will have a profound impact on care patterns, and must rate as an essential topic for research.

Several other social trends are more promising regarding the potential for intergenerational support. The larger amounts of parent support provided by married men in the higher social classes, and previously married men regardless of their class, could foreshadow a lessening of the gender restrictions and biases in intergenerational support. The declining retirement age, and the increased life expectancy of the aged, also could increase the chances of having sons as well as daughters available to support their parents. The proportion of families having two generations in the retirement years will be rising appreciably. Among the current generation of the disabled aged, 10 per cent of their children are aged 60 or over (ibid).

On an even more speculative note, it may be that more older people will be able to draw on their assets to secure family support, or to find alternatives. Wealth amongst the aged is expected to increase in the coming years, and it is

possible that more older people will purchase annuities, or guaranteed life time care in retirement homes. In these circumstances, adult children are freed from support obligations but look forward to smaller inheritances. Alternatively, if American findings (Sussman, 1976) are any guide, older people may be able to enter into understandings by which relatives provide care and then receive large inheritances as exchange. Either of these strategies would represent a major departure from the current patterns of preserving most assets until death, and then distributing them equally among children.

Modern life styles do not appear likely to increase the abandonment of older members of family. Although social attitudes are difficult to predict, one indication of the consequences of more modern behaviour could be the current action by the growing (and possibly trend-setting) middle classes. These are the groups which are more likely to experience the social processes central to the modernisation thesis - rapid social and technological change, social utilitarianism and individualism, and geographical mobility. Yet the findings have shown that children in the higher social strata are more likely than their working class counterparts to assist their parents. They seem to hold true to traditional norms of family responsibilities, and have greater means to fulfill them. These conclusion, based on current individual behaviour, are consistent with trends which show considerable stability in family support of the needy aged over the past generation.

In summary, the demographic profiles and social trends suggest a slight reduction of the family members available to support the growing numbers of disabled older widows. If these predictions hold true, the consequences will emerge in reduced family support for some older people, and greater pressure on the carers of others. The balance between these outcomes will depend largely on the social interpretation of intergenerational rights and responsibilities. Another key element in these changes will be the role of government relative to self reliance and family support.

Public Policy and Support of the Aged

The apparent stability of family support over the past generation of older people has been accompanied by sizeable increases of contributions by the public sector. Government expenditure on the aged, at the national level alone, increased from 2.7 per cent of the overall economy in 1965-66, to 5.7 per cent in 1982-83 (Advisory Council for Inter-government Relations, 1983). The range, nature and explanation of these changes are complex matters in themselves, and have been considered at some length in a number of publications.[26] For the purposes of this paper, attention is directed selectively and summarily to only three principal areas of national policy: the pension, nursing homes, and community services.[27] The aim is to assess policy developments in terms of their interrelationships with self reliance and family support, their distributional consequences, and possible future developments.

Over the post war years, the non-contributory pension expanded from a small supplement available to only a third of older people, to an indexed payment which provides most of the income of three quarters of the aged (A.B.S., 1982). Various public subsidies for nursing homes, introduced in the early 1960s, have led to the rapid growth of an industry which now serves approximately 5 per cent of older people (House of Representatives Standing Committee on Expenditure, 1982). A range of community services - most notably visiting nurses, home housekeepers, and home delivered meals - have also been introduced (ibid), and one or another of them now serves 7 per cent of older people in Sydney (Kendig et.al, 1983). During the financial year 1982-83, the Commonwealth government spent approximately $5800 million on the pension, $800 million on nursing homes, and $70 million on community services (A.C.I.R., 1983).[28]

The emergence of a near universal pension, now provided and viewed as virtually an aged-based right, has wrought major changes. Most importantly, it has ensured at least an austere standard of living for the aged, and has removed

the stigma of dependence on either a residual welfare payment or income support. from family. Widening eligibility has enabled older people to retire earlier, while the income test continues to serve as a powerful disincentive to part time work. The changes have altered the balance of family support by facilitating residence apart from children, and by preserving the amounts of wealth eventually passed down the lineages as an inheritance. Overall, the pension has increased the choices and interpersonal independence of the aged. Yet the small size of the pension (less than a quarter of average earnings) remains inadequate for many older people lacking any private resources, and full pensions are available to older people with substantial wealth in their homes and certain other kinds of investments.

The introduction of nursing home subsidies has served to reduce both neglect of the aged and stress on their families. As a general rule, access to nursing homes is no longer dependent on the amounts of private resources.[29] While older people who do not have spouses or children are overrepresented in them, most residents formerly had co-resident support (Gibson and Rowland, forthcoming). Many residents enter homes for short periods of time while recovering from acute illness or injury, while long term residency averages three years (Minichiello, 1982). These findings suggest that nursing homes occasionally substitute for unavailable family, but their more usual role is to take over from family only when needs become very intense or are sustained for long periods of time. Approximately 15 per cent of older people in nursing homes would be more appropriately served in the community (Doobov, 1980).

The very small amount of funding available for community services virtually rules out any significant part in care of the aged. An analysis of use patterns (Kendig et.al, 1983) shows that fully three quarters of the disabled aged in the community rely entirely on themselves and informal support. The minority who do use services typically live alone and also have substantial assistance through modified extended families. It is clear that community services provide only

small amounts of supplementary assistance, which do not provide genuine alternatives to residence with a carer or institutionalisation. Moreover, if an older person cannot manage independently and enters a child's home, the available services are generally inappropriate for providing the respite and other kinds of assistance most in demand in the circumstances. Although attitudinal data suggests widespread acceptance of community services, most potential users say they rely on family support because the services are not known, or are too difficult to obtain.

Having briefly reviewed each of these primary areas of government intervention, it is possible to draw out some of the contrasting principles which apparently underly them. Virtually 90 per cent of the electorate can look forward to reaching retirement, the status which legitimises receiving a virtually stigma-free cash payment of use to anybody irrespective of their circumstances. The rationale for such a benefit is reciprocation in old age for taxes paid in midlife - a dubious though widely accepted claim, as discussed below. Support for expenditure on nursing homes - the need for which is uncommon yet equally unpredictable - is on the basis of a 'social insurance' model in which only government can be certain of carrying the heavy expense of meeting an undeniable and intense need when it does occur. Community services, however, fall into an interpretative twilight area: a clear and convincing basis for their provision has yet to be defined, let alone articulated to various political interests.

The rapid growth of public sector contributions to the aged has served primarily to supplement self-reliance and family support. It has enabled the aged to share in the growing overall affluence of the community more than it has reciprocated for taxes previously paid to fund public support to past generations of the aged. By shifting some of the responsibility to the public at large, some of the injustices inherent in self-reliance and family support have been relieved. The quality of family relationships could well have been

increased by reducing some of the heavy responsibilities of providing joint residency and other kinds of substantial care. But the income support and services remain inadequate for those most in need, and are not restricted solely to those unable to rely on themselves.

Over recent years a spate of government inquiries and reports have voiced growing alarm about the rapidly increasing costs of the pension and nursing home subsidies. The government has temporarily suspended subsidies for constructing nursing homes while it considers a major reorganisation of aged care. It appears inevitable, however, that the industry will continue to expand in order to provide 'care of last resort' for the escalating numbers of seriously disabled older people. There also is some pressure for the expansion of community services, partly with the goal of substituting for more costly institutional care, but it is by no means clear that funding will be commensurate to levels of need. Care of the small minority of the dependent aged is not a significant political issue.

The major budget item, the pension, presents a very different set of substantive and political concerns. In a time of sustained recession, large budget deficits, and increasing diversity in the economic resources of the aged, serious questions are being raised about the continuation of pension policies established in the more favourable economic climate of the early 1970s. The government recently proposed the re-introduction of a version of the assets test which was dropped in the late 1970s. During 1983, an income test for receiving the basic pension was reintroduced for persons aged 70 or over - another reversal of the more generous policies established in the 1970s.

Opposition to these changes has become a distinct political liability for the government. Although the current generation of the aged have not paid for comparable income support for previous generations of the aged, there is a strong plea - and a sympathetic response in the electorate - that the government

is attempting to break an implied intergenerational contract. The spectre of some form of inheritance tax - to recoup some of the wealth currently preserved by the public pension and distributed tax-free to private individuals - has been attacked equally vehemently, although no such proposals have been developed. In contrast to the weak political support for care of the relatively few disabled older people, there is a strong lobby for continued income support for the vast majority of older people irrespective of financial need.

There is little doubt that the political contest over redistribution through the public sector will intensify in the future. Without additional revenue, it will become more difficult to maintain even existing levels of support given the demographic trends and economic prospects. Yet the next cohort of older people will be a more powerful political force having higher expectations, more political skills, and a greater sense that public support is legitimised by sizeable tax payments in midlife. To further complicate matters, older people will be less disadvantaged by their cohort of birth as well as advanced age, and the nexus between age and need is likely to attenuate as diversity among the aged increases. The current struggle over pension policy may well foreshadow a more sustained generational and class competition for public resources.

Conclusions

One of the underlying themes in this paper is that sound empirical research can play a significant part in the development of better policy and better theory. An understanding of the institutional arrangements for making intergenerational transfers requires an appreciation of the diversity among the aged, and among those who precede and follow them in family lineages and population cohorts. It is necessary to have studies which encompass life-long relationships, through a variety of interconnected social institutions, as they unfold in different periods of history. These complex concerns can be addressed

only by means of comprehensive research strategies that take into account varying streams of time (life cycle progression and historical change), multiple units of analysis (individuals, couples, extended families, and private and governmental organisations), and complementary levels of analysis (Census data, quantitative surveys, and qualitative studies).

A review of the post war experience of older Australians does not reveal any of the abandonment posited by modernity theory. Spouses and daughters, motivated by strong normative expectations, continue to provide substantial and unreciprocated support for the minority of older people who at some point require substantial and sustained care. The significant growth of public intervention, most notably the near universal pension and non-means tested nursing home subsidies, has served more to augment than to replace self reliance and family support. Although significant minorities of older people remain impoverished and without adequate care, the lot of the aged as a whole appears to have improved substantially since the early 1950s (Hutchinson, 1954).

Demographic ageing will inevitably increase the demand for transfers to the older generation over the remainder of the century. The growing numbers of very old widows - more of whom will be childless or have daughters in full-time employment - provides a sound basis for expecting a rapid growth in the need for community and institutional services. It is equally apparent that earlier retirement is being counterbalanced by increased potential for financial self sufficiency. Judging from past experience, the availability of public support will depend as much on economic circumstances as on needs, and the growing political power of older people will have greater effect with regard to income support than with services for the disabled.

Existing research findings also provide a reasonably clear picture of the distributional consequences of different options for the future. To the extent that care of the aged remains primarily the responsibility of family rather than

government, there will be serious inequities between individuals, and the costs will fall most heavily on women in midlife as well as in old age. If full public income support continues to be provided to the vast majority of older people, and accumulated wealth continues to be inherited tax-free by family, there will be further increases of both class and cohort inequalities. A failure to appreciate the rapidly increasing diversity among the older generation could lead to inadequate support for older people in greatest need as well as a sizeable burden on younger generations. The resolution of these questions will emerge in complex negotiations and contests within families as well as government.

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Notes

1. The survey was carried out by the Ageing and the Family Project at the Australian National University. Sydney has a population of approximately three million people, 20 per cent of Australia's aged population. The survey was administered to an age-stratified sample of persons aged 60 or over living outside of nursing homes or other kinds of institutions. For further information on the survey see Gibson and Aitkenhead (1983) and Rowland, Kendig and Jones (forthcoming).

2. While 45 per cent of male retirees have had some superannuation coverage, only 15 per cent rely on it as their principal source of income. Coverage rates are increasing rapidly: from 40 per cent among all of the current retirees (including women) to 60 per cent of those about to retire. ABS (1980).

3. This information was obtained from the results of the 1981 Sydney survey, which asked respondents' about their now deceased parents. The figures exclude the 25 per cent of parents who died before age 60, the very few living parents, and those who had no surviving children in the current generation of older people.

4. The American evidence on this topic is mixed, and there are equally reasonable bases for concluding that age-specific morbidity rates and functional health are increasing or decreasing (Feldman, 1982). Notwithstanding the importance of the topic, no Australian research has

yet addressed it.

5. Among Australians aged 70 to 79 the proportions in their own households varies from 78 per cent for those on low incomes (less than $4,000 annually) to 87 per cent for those on incomes of $6,000 or more. The source is unpublished data from a one per cent sample of the 1981 Census.

6. In the Sydney survey, two-thirds of respondents said that older people wished to remain at home with outside help if they could no longer manage on their own. Among the remainder, retirement homes were twice as popular (18 per cent) as either living with children (8 per cent) or living in nursing homes (8 per cent). The middle class aged were especially likely to prefer a retirement home (26 per cent) as compared to the working classes (15 per cent).

7. Siblings and friends, the other potential sources of intragenerational support, generally assist only with relatively less important tasks of daily living (Kendig et.al, 1983).

8. Unpublished data from a one per cent sample of the 1981 Census.

9. The figures are for persons aged 65 or over throughout Australia. The source is unpublished date from a one per cent sample of the 1981 Census.

10. Qualitative studies, however, do show that a number of older women experienced a sense of greater control over their lives after widowhood (Day, forthcoming).

11. See note 9.

12. See note 8.

13. The 1981 Census figures (see note 8) show that, among women who are in their seventies and are not currently married, the proportions in institutions varies between 15 per cent for the childless, 10 per cent for those having one to three children, and 8 per cent for those having four or more children. For this age group, widows having four or more children are no more likely to be in an institution than are childless married women.

14. See note 3.

15. The proportions of older people who reported that aged mothers had lived with one of their children for a year or more declined from 48 per cent among respondents now over age 80, to 40 per cent among those currently in their sixties. Rising household headship rates among the single aged also confirm these trends (Di Iullio, 1976). Unfortunately, no tabulations are available on living arrangements of older people at the time of Censuses prior to 1966.

16. See note 3.

17. In the Sydney survey, fully 80 per cent of respondents agree that "when the going gets tough people should rely on themselves". But 56 per cent also agree that "older people should be able to depend on their adult children for the help they need". Resolution of the tension between these views, as interpreted by both adult children and aged parents, lies at the heart of decisions regarding the provision of informal support.

18. See note 3.

19. See note 3.

20. Men are more likely than women to be providing support to parents in law. This assistance generally is limited and emerges as a supplement to primary support provided by their wives (Kendig, 1983).

21. The labour force participation of married women aged 45 to 54 rose from 28 per cent in 1964-65 to 46 per cent in 1976-77 (ABS, 1978). Among the current generation of older people, 11 per cent of the retired women left full time work in order to care for an aged parent or spouse, as compared to only 2 per cent of the men. See note 3.

22. See note 8.

23. See note 3.

24. In the Sydney survey, half of the children of the upper-middle class aged also were in the upper middle classes; among the working class aged, little more than a quarter of their children had attained upper middle class status.

25. For an analysis of the ethnic dimension to some of the survey findings, see Rowland (1983). The Australian Institute of Multicultural Affiars currently is employing the Ageing and the Family Project questionnaire to examine support of the aged among a wide range of ethnic groups.

26. Analyses of recent policy developments are provided by A.C.I.R. (1983), House of Representatives Standing Committee on Expenditure (1982), and Social Welfare Policy Secretariat (1980); historical reviews are available in Kewley (1973) and Brennan (1982).

27. Other important policies for the aged include taxation concessions on superannuation benefits, virtually free medical services, subsidised retirement homes and hostels, and a large public housing program.

28. Expenditure on the aged amounted to $133 million by State governments in 1980-81, and 11 million by local government in 1979-80 (A.C.I.R., 1983).

29. Among persons aged 75 or over, the proportions in nursing homes or other kinds of non private accommodation are 18 per cent for those on low incomes (under $4,000 annually) and 15 per cent for those on higher incomes ($6,000 or more). See note 8. Among the past generation of the aged, use of nursing homes for a year or more was more common among aged mothers from the middle classes (16 per cent) than those from the working classes (6 per cent). See note 3.

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Legal regulation of the family and the effect of changes in family

From a socio-legal approach to divorce to a sociology of socio-legal regulation as applied to the family

by JACQUES COMMAILLE

Sociological approaches to the family have often been victimized by regrettable divisions in terms of the production of knowledge. On the one hand, there is sociology of the family, on the other, analyses of social policies or the production of law or its applications. By virtue of its internal organization into research committes, the International Sociological Association consecrates this division in the production of information on the family.

One might well wonder what led to the organization of this field of knowledge. Have not social policies, and law as well, been outside sociology for a long time because they set themselves up as the reasons for its existence ? In this case we mean sociology of the family. It was called on to be a sociology of social facts, capable of supplying elements of decision or action to the politican or to the legislator.

Does not this instrumentalized conception of family sociology sometimes run the risk of leading to an incomplete view of the family and of family practices ?

Can one approach the family sociologically by sticking only to behavior and attitudes without considering their normative foundations and what they reveal about other socio-economic and cultural determinations which influence the family ? In a previous work, we attempted to separate the diverse constituents of divorce (which cannot only be explained by the behavior of individuals or couples) (COMMAILLE, 1981).

The theme of the XXth International Seminar of the Committee on Family Research, "Social Change and Family Policies", appears very pertinent to us from this point of view. We take advantage of this propitious occasion to present what we call a sociology of socio legal regulations as applied to the family.

* *May all my thanks go to A. LAGARDE and C. COULOMBIER for the help they provided in preparing this paper.*

But what does this mean ?

It means granting particular importance to institutional determinations (political, juridical, administrative, judicial) which apply to the family sphere.

By using the term socio-legal regulation, we do not, however, comply with the definition which has been given to the expression "social control", that is to say the "general process which helps (...) in ensuring the up-keep and the permanence of the social structure" (LECUYER, 1967).

We do not see our conception as belonging to finalism. It is fitting for us to apprehend the processes of adjustment, opposition and contradictions among the multitude of logics which fit into different historical rhythms and moments. The temporary results due to the application of socio-legal regulations to the family can thus only be the fruit of a multitude of convergent, contradictory or complementary actions by the subjects themselves, the agents and the instruments of regulation.

Our goal in offering this approach in terms of a sociology of socio-legal regulations and in suggesting our definition is to achieve the knowledge of sociology of the family. Such an objective does not appear incompatible with any other objective of action in the field of the family. Sociology can be useful here in avoiding the mystification made up by any andall idea of relationship (between social policies or juridical production and family behavior) in terms of simple causality or according to a teleological conception.

A socio-legal approach to divorce will allow us to separate the main elements of a contemporary model of socio-legal regulations as applied to the family. We shall later attempt to illustrate this model by referring to other areas touching on the family (1).

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(1) The difficulty here is without doubt in escaping particularisms. We shall try even though we have not been able to adopt a comparative approach systematically and because the empirical foundations of our reflections are above all French.

1 - A SOCIO-LEGAL APPROACH TO DIVORCE -

A study of the evolution of legislation, compared with the divorce rate, in fifteen European countries, indicated that recognition of the breakdown of the couple was now the main legal cause of divorce (Le divorce en Europe occidentale, 1983). Nearly all the countries concerned had modified their divorce legislation. In 1960 fault was the normal cause of divorce, whereas in 1981, this "normality" had reverted to the "breakdown/common consent" dyad.

The above-mentioned change fits in logically with the tendencies already analysed at an international level (RHEINSTEIN, 1972 ; ANCEL, 1975 ; GLENDON, 1977).

These juridical transformations bear witness to a change in the social status of divorce. They are also proof of a modification in State strategy in the matter. It is non longer a question of dissuading couples from divorcing but of recording (almost of verifying) their wish to divorce.

The cancelling of State control over the decision to divorce nevertheless goes with a reinforcement of the State's interest in and of its control over the effects of divorce : "the objective of the legislative policy sets its point of intervention after and not before the breakdown" (PERRIN, 1983).

Such concern for the effects can also lead to the re-organization of the obstacles to divorce in that the will to regulate all the consequences of the breakdown methodically can result in the procedure's becoming more complex, as seen in the German example (CAESAR-WOLF et al., 1983).

But the State's objective here is not necessarily to dissuade at a different level (even though the conditions sometimes applied to the settlement of certain divorces - for example, in the case of broken homes ("rupture de la vie commune") in France - were due to political currents

with the greatest nostalgia for the indivisibility of marital ties). The effects of divorce are no longer dealt with by reference to notions of past responsibility and of fault, but rather in relation to the individual's needs or interests. It is a question of the State's taking the real situations into account, of its managing the financial and social consequences of "marital breakdown". That is, for example, why several European legisiatures specify the criterion of need (care of children, perspectives for professional reintegration, age, etc...) (Le divorce en Europe occidentale, 1983). It is without doubt significant in this respect that the French law of July 11, 1975 devotes twelve clauses to "child custody" whereas the preceding one devoted six lines to it.

Nevertheless, this appreciable redefinition of State strategy in respect to divorce does not mean that a sort of perfectly rational adjustment between the logics of socio-legal regulation and social logics is at work. This is shown by a rapid analysis of the questions of "child custody" and of alimony.

When divorce laws were based on the fault principle, "child custody" was first granted in conformity with this principle : the child had to be entrusted to the "innocent" spouse.

Legislation then progressively consecrated an evolution in court decisions corresponding to an evolution of attitudes in respect to the child : more and more it became appropriate to give prior consideration to the "child's interests".

But this notion of the "child's interests" raises a problem. Its emergence is revealing of the mutations in the family's socio-legal regulations. In fact, one notices a transition from the reference to the legal norms , which is indissociably tied to the moral norm (divorce is a fault), to the reference to norms of psychological or social utilitarianism (interest, need). The latter reference is now more and more dominant, and it involves an evaluation. This evaluation can be at the judicial level, at the level of expert appraisal (particularly the one based on psychological knowledge), or at the level of social analyses. These three levels are likely to blend together and the law,

as a reference for the judiciary, then loses its specific status. This evaluation can only be diverse, since the uniqueness of the juridical reference has not been replaced, for example, by the uniqueness of the scientific reference.

The notion of the "child's interest" appeared in the XIXth century as a progressive transfer from family interest towards the child's interest as general interest and, finally, as seen in relation to the individual (PERROT, 1982). But the role played by medical and psychological knowledge has not resulted in the notion's going unquestioned. It remains vague, subjective, relative, and cannot on its make up a main decision objective. "The child's interest can be seen as an argument and as official recognition of successive policies of child protection" (CHAUVIERE, 1982) or as an indispensable reference to extremely diverse judicial decisions. The questions concerns the diversity of the evaluation reflected by divorce decisions on "child custody" or the debates on the question. It is this diversity which explains "judicial pluralism" (CARBONNIER, 1975).

The granting of custody to the mother is most frequent (Divorce en France, 1981 ; WEITZMAN and DIXON, 1979, 1980). Even in a country like Sweden (often cited as an innovator in the field of the family and of role distribution), 85 % of the cases resulted in the child's being entrusted to the mother (TROST, 1981).

But other possibilities are used or brought up. "Alternate custody" is formally provided for in the laws of some American States. "Joint custody" is either legalized (as in Sweden) or accepted (TROST, 1981 ; NICOLAS-MAGUIN, 1983 ; HARPER, 1982 ; RUBELLIN-DEVICHI, 1984).

The variety in the solutions which are used or recommended (1) corresponds to the variety of social situations, but, above all, it corresponds to a difference in point of view. The notion of "mother's custody" goes back to a conception of roles whereby it is "natural" for the woman to take care of children.

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(1) of which one has but a partial idea with official statistics. A recent investigation thus revealed that, alongside the Court's official decisions, some couples set up new custody practices, which are helped by the fact that judges tend more and more to make open-ended provisions (BUISSON et al., 1984).

Without accepting this idea, certain theses (FREUD, GOLDSTEIN and SOLNIT, 1973) are without doubt indirectly partial to it. Affirming the child's need of continuity, emphasizing the importance of "parent-guardian" and of his or her permanence, condemning visiting rights as detrimental to the child - beyond all doubt this means accepting the idea of centering on one parent.

"Joint custody" is partial to the child in that it represents a tentative to preserve the existence of the "parental couple" by distinguishing it from the "marital couple".

We do not intend to dwell on or to describe particular aspects of the post-divorce period. Instead, we intend to make use of them to introduce and offer an early illustration of our thesis of necessary break with the idea of a sort of rational and linear adjustment between the evolution of family socio-legal regulations and the evolution of family practices. Placing these trends in opposition is more revealing of discordance and contradictions than of mastery.

Thus, if one refers to the French example, an analysis of jurisprudence (BENABENT, 1980) shows an astonishing disparity in the positions of jurisdictions concerning "alternate custody" or "joint custody". Such disparity at the judicial level is certainly linked up with legislative hesitation. The law of July 11, 1975 did not explicitly foresee these new forms of custody and adding complementary clauses was discussed. The problem has been (temporarily ?) resolved by a decision not to modify the law. This was compensated for by Executive intervention. The Minister of Justice issued a circular (circulaire du 6 mai, 1983), whereby "... subject to the discretion of the courts", the Minister suggests "... that in his opinion... " "joint custody" (...) has positive aspects but, "... being a question of "alternate custody" (...) this type of measure is generally advised against by doctors and psychologists".

Herein, we feel, is a good example, on the one hand, of relations between judicial and juridical authorities, between the legislative and executive branches, and on the other hand, of possible uses of knowledge in the family socio-legal regulations !

The hesitations or the contradictions of the socio-legal regulations must also be understood, not only in relation to the breadth of the evolution of family practices, but also in relation to what is contradictory or incoherent in them : for instance, the poor use of the visiting rights made by the parent who has not the custody of the child (EEKELAAR and CLIVE, 1977 ; ROUSSEL et al, 1975 ; BURNS and HOMEL, 1979). Likewise, if the solution of "alternate custody" is often given as fitting directly into this evolution (which tends to give more and more importance to the "child's interest"), certain analyses do not fail to emphasize that "it is a question of parental interests, and an attempt is made to share the child" (Actes du Colloque "Le droit face aux politiques familiales", 1982). The child's needs would then be substituted for by the parents'needs.

This possible incompatibility, which is put forward between parental expectations and the child's interest, can lead to judicial decisions which fall resolutely in line with the new perspectives. Thusly, a research project on judicial decisions after divorce has just been carried out. It relates uniquely to decisions modifying the law on custody after divorce at the Court of Paris in 1981 (in French - Tribunal de Paris) but its merit is that is provides observations on a phase of the divorce process where, strangely enough, little work has been done (THERY, 1983). From an analysis of decision motivations, it appears that the judges integrated their decisions into a dominant model. The model can be resumed thusly :

1. "The good parent does not need the child" ;

2. The "good" "parental couple" is the one which has known how to go beyond their "marital couple" conflicts to the advantage of the child ;

3. The setting up of a new family, of a new couple including one of the parents, is a possible "good" "parental couple" model. Therefore the dominant arguments add above all value to the "psychological soundness and social stability of the "good parent", to his or her non-dependence in relation to the child, to the "insertion into the post-divorce phase, to going beyond the marital crisis and even to the substitution of a new home for the one destroyed by the divorce" (THERY, 1983).

Shrowded in confusion and contradictions, socio-legal regulations are thus performed in the area of child custody for divorced parents at a judicial and juridical level and according to obediance to pragmatism rather than legalism. This pragmatism can lead to one of three results. Either to the woman's becoming the last rampart of the family fortress which protects the child, (DHAVERNAS, 1978) or to seeking the solution in the dissociation of the marital couple while preserving the "parental couple", or to assuming the broken family model to the point of valorizing the "constructed" "parental couple".

It can be asked if the pragmatism of the judges can suffice as a mode of socio-legal regulation in face of the volume of family "destructurizing" phenomena ! This volume is emphasized by the statistics on the development of "single parent" sequences (BUMPASS and RINDFUSS, 1979 ; GLICK, 1979 ; EDGAR and OCHILTREE, 1982 ; ROUSSEL, 1983 ; VILLAC, 1983).

We can no doubt fix the problem at a societal level. From this point of view, the investigation we were able to carry out on the social conditions of children after their parents divorced would seem to indicate that their problems were at first social and then psychological, because society is not ready to assume the functions of complement, relay, substitute or initiator of new social or family frameworks of child care. And yet, this is what the in-progress new definitions of family structures would require (COMMAILLE, 1983 ; MACLEAN an EEKELAAR, 1983).

As with the granting of the right to "child custody", alimony decisions were formerly based on the principle of "divorce due to marital fault". The principle and the amount of alimony granted were determined in relation to "culpability" or "innocence". The social aspect (answering a need created by the divorce) was undoubtedly secondary in relation to the symbolic function. This served to punish the guilty party and to show the deviant character of divorce in order to reinforce the institution of marriage (COMMAILLE et DEZALAY, 1971).

With the changeover from "divorce due to marital fault" to "breakdown divorce," a contractual model has been added to the above

normative ("normative retributive")(in English in the original) model. It is no longer a matter of penalizing the "guilty" husband to the advantage of the "innocent" wife. Now the matter is of proceeding to redistribute the resources equally between two partners who are separating (CARDIA-VONECHE et BASTARD, 1983). This can go as far as a division into equal parts of the couple's joint possessions (FORSSIUS, 1975 ; DIXON and WEITZMAN, 1980). The function of balancing the condition of one of the partners in relation to the other is emphasized by the temporary character of certain types of alimony granted during the time it takes the women to ensure her socio-professional reinsertion (WEITZMAN and DIXON, 1980).

The contractual character of this method of determining alimony also stands out in that it allows the partners to settle all the material, financial and patrimonial aspects of their separation outside the courts (which step in only as an authority of control and ratification) (DIXON and WEITZMAN, 1980). As it is foreseen by the new French law, the convention agreed upon by the spouses who are divorcing by mutual request (one of two types of divorce by "common consent") and which oversees all the effects of their separation falls well into line with the contractual conception of breakdown.

This model is related to the one which is the basis of French civil law. But the principle of contractual liberty assumes equality of partners, which, however, is often a matter for fiction. The condition of the divorcing woman merely reflects the condition of women in society, in other words, general inequality in relation to men.

Such inequality is not created by divorce but it is aggraved by it. Most investigations indicate a noticeable decrease in the average revenue of women after divorce (BRANDWEIN et al, 1974 ; ROUSSEL et al., 1975 ; HOFFMAN, 1977 ; WEITZMAN and DIXON, 1980 ; MACLEAN and EEKELAAR, 1983). Alimony is only an uncertain remedy. This is true because it is granted to the woman much less than social images of divorce would have us believe (WEITZMAN and DIXON, 1980). It is also true because alimony meant for the woman or the children is often paid irregularly or not at all (ROUSSEL et al., 1975 ; BOIGEOL, 1979 ; SORENSON and MACDONALD, 1982).

Consideration of the unequal status of women can lead to a paradox. The liberalization of divorce and the suppression of the notion of fault can take away the "bargaining power" which was their before in the normative model. The "strategy of confrontation" was more proficient in obtaining the necessary material and moral compensations, by virtue of the husband's fault, than the "strategy of compromise" (GORDON DAVIS, 1977 ; DIXON and WEITZMAN, 1982 ; WEITZMAN, 1981 ; COMMAILLE, 1981).

The limits of the contractual model explain the existence of a third model - social protection. The need criterion is no longer adopted in terms of the ex-spouses' financial capacities but on its own. The social responsibility priciple is substituted for the principle of inter-individual responsibility. This model is perfectly embodied in "guaranteed security funds" (in French - "fonds de garantie"), which, according to different conditions, aim to ensure the payment of alimony by a social organization which steps in for the defaulting debtor. It is even more perfectly embodied when it ensures a sort of "guaranteed minimum" to children of divorced parents, whatever the level of resources of the debtor parent (system used in Sweden, for example).

Of course, our purpose in listing the three models of reference which structure the decisions (or debates) in the area of alimony is not to put forward (more or less implicitly) the idea of a sort of linear evolution wherein the three models follow each other in time. If the normative model is no longer the only one, it still coexists with the other two. Formally, the normative and contractual models can coexist in the same legislation (as is the case in France). Likewise, the judge in exercise will eventually be able to refer indifferently to one or the other, depending on the needs of the cause, as he or she sees it or as it is set out by the parties (BASTARD et CARDIA-VONECHE, 1983).

If these models enable us to locate the "espace" of decisions in terms of alimony, their definitions cannot result in a rationalization of the processes of sociolegal regulation, which, in this particular area and elsewhere, are more revealing of confusion than of mastery.

Judicial decisions in this matter are highly diverse. The principle of granting alimony or its amount can vary noticeably even in the case of equal socio-economic, age or duration of marriage conditions (BOIGEOL, 1981 ; BASTARD et CARDIA-VONECHE, 1983 ; WEITZMAN and DIXON, 1980 ; WEITZMAN, 1983). There cannot be a rigorous instrument of measure in this area or an irrefutable legal reference ; there can only be a pragmatic appreciation of situations. Yet this depends just as much on the value systems of the judges as on the multitude of social situations or the diverse functions one can allot to alimony - reparation of prejudice, contribution to reinsertion, equalization of economic conditions, retribution for the functions of domestic production during the years of marriage (raising the children and housework), etc...

The confusion can be all the greater in that divorce settlements and socio-legal regulations in the area cannot resolve the following : on the one hand, that which is due to inequalities in the social status of men and women in society, on the other, that which is due to the new economic problems created by the "mobility" of the family structure (for example, the inability of many men to be resource providers for two households at the same time (VALETAS, 1978 ; WEITZMAN and DIXON, 1980 ; ERICSSON, 1980). Therefore, the problems contained in the socio-legal regulation of divorce are tell-tale signs of macro-social dysfunctions with respect to sex relations or the instrumental function (micro-economic in this context) of the family, rather than of judicial or juridical system dysfunctions.

2 - JUDICIAL ACTION AS AN ELEMENT OF THE SOCIO-LEGAL SYSTEM OF REGULATION -

In this context of uncertainty and confusion, the question is of THE type of justice, of THE judge, of THE law, as if there was somewhere a supreme instance of social regulation which could only function as an entity.

And yet there, as well, the difficulties of socio-legal regulation, confronted with mutations in the family structure, appear as multiplicities of logics and, accordingly, as contradictions.

Thus evolutions in the family give rise to different responses by judicial authorities. Such diversity of responses is not only set up in face of these external determinations but also in face of internal ones : professional strategies, criteria of professional identity definition and institutional strategies (in particular) faced with an increase in matters in dispute (COMMAILLE, 1982).

We have, thus, in an analysis of judicial interventions in the area of the family, isolated two main types of judges :

- the "civiliste" judge (in French in the original), whose decisions are above all based on reference to law. For this judge, family law must first be "practice of the law". This law is conceived as a supreme guarantee of the defence of individual liberties, of respect for individuals, of their autonomy, and in conformity with the judge's self-proclaimed principles of liberalism. Action is directed, in a dominant fashion, according to a "normative logic" which relates to a statement of the rules and principles governing family life as they are contained in French civil law.

This model of judge, still present in the French system, was no doubt perfectly adjusted to the principle of "divorce due to marital fault".

- the "familialiste" judge (in French in the original), whose decisions are initially based on social finalities. In divorce matters this means helping the couple and giving thoroughgoing support to the children. This action is generally oriented according to a "social logic" which corresponds to priority consideration of the social effects of the situations. Less a "judge-referee" than a "judge-coach" (OST, 1983), whose method is based on "dynamic instrumentalism" (TRUBEK, 1972), wherein it is no longer a question of simply applying pre-established rules and principles, but of cooperating in the implementation of social finalities (OST, 1983). This judge's recourse to specialists (psychologists, psychiatrists, social workers, "marital therapists") and continuous rather than pin-point intervention seemingly refer to a model of therapeutic justice that T. SZASZ announces thusly : "... traditional justice is based on principles of good and evil and modern justice on those of health an illness" (SZASZ, 1975).

This second current, more than any other, has recommended and promoted new modes of appropriate judicial organization which correspond to a special response tentative made by Justice to evolutions in the family. Thus there are family courts, where there is a great variety of projected or existent models, according to the country, from jurisdiction which unites all family disputes to the section of the court specialized in divorce matters (ANCEL, 1977 ; ROUARD, 1976 ; KING, 1979 ; CAESAR-WOLF et al., 1983 ; MULLER-FREIENFELS, 1978 ; GIESEN, 1975 ; HARPER, 1982). In addition to the competence, these judicial models are generally defined by an integration of medico-psychological specialists or of auxiliary services (information, reception, etc...)

But theses experiences have uncertain destinies. In France, for example, the magistrates set up "Family Courts" (in French - Chambres de la famille), but they did not develop in the way their originators wished. The law of July 11, 1975, which reformed divorce by creating a judge specialized in divorce, the Family Judge (in French - le Juge aux Affaires Matrimoniales), has practically led to the non-consecration of this type of jurisdiction, if not to its disappearance.

The example illustrates the sharp-edged question Justice is asked when confronted by family changes. What is its role ? What is the judge's role ? Contrary to the thesis which states that the "judicial institution is more and more integrated into a continuum of mechanisms (medical, administrative, etc...)" (FOUCAULT, 1976), it seems rather that, in this French example, it has shown its will to recover its threatened specificity (which is first of all based on reference to law and where technico-juridical recourse does not have to depend on a "science" devoted to prophylactic dealings with the family).

This limit to its role set by the judicial institution itself can be strengthened by a "dejuridicization" movement. This movement aims to institute new extra-judiciary forms of socio-legal regulations applied to the family. In the United States, for example, there is the system of "mediation" which is an informal way of settling conflicts and entirely based on the willof the parties to reach an agreement with the help of

a third party (IETSWAART, 1980 ; HERMANN et al., 1979 ; COOGLER, 1977 ; WEISBROD, 1977).There is also the "mediation-arbitration" system for cases where the parties find it impossible to resolve their conflict, thus necessitating the use of an arbitrator who is not perforce a judge (IETSWAART, 1980 ; KRESSEL et al., 1977 ; HERMAN et al., 1979 ; MALCSON SPENCER and ZAMMIT, 1976, 1977 ; MNOOKIN and KORNHAUSER, 1979 ; Univ. of California, 1979 ; A. I. D. F., 1982).

But these new ways of dealing with conflicts are not devoid of criticism. This type of intervention "... counts on a postulate of rationality and equality in the power relationships of the parties on the one hand, of the mediators' and arbitrators' competence and integrity on the other, and this is far from being verified by the facts" (MEULDERS, 1984 ; A. I. D. F., 1982). Thus, "... more thought is given to after-the-fact correctives in the form of causes of annulment or of extended judiciary revisions, which necessarily depart from the rules of contract law, ..." (MEULDERS, 1984 ; A. I. D. F., 1982).

There, as well, the uncertainties of the socio-legal regulation systems faced with evolutions of the family are more worthy of emphasis than a linear diagram of evolution.

There is no socio-legal regulation system which can take the place of another or a "complementariness" which can be set up between all the systems, but there is, most often, coexistence in conflict or contradiction. For example, the development of "do-it-yourself" divorces (the spouses reach a contractual agreement, perhaps with the help of lawyers) which can result in administrative registry or simple judicial verification (CRETNEY, 1979 ; BARRINGTON BAKER, 1977 ; A. I. D. F., 1982 ; MNOOKIN and KORN-HAUSER, 1979 ; EEKELAAR and CLIVE, 1977), questions the Justice on its legitimacy and the judge on his or her role in respect to parties or lawyers. Thence comes the symbolic importance which can cover the procedure and its complexity (POCAR et RONFANI, 1983).

In an exemplary way, family mutations, especially as expressed in the evolution of divorce, raise the problem whether or not roles

in the socio legal regulation system should not be redefined.

The uncertainties of Justice concerning its place in these systems can also be seen in its difficult relations with the Civil Service, which is accused or extending its power to the detriment of judiciary intervention (for example, concerning the protection of children and young people or divorce). But theses debates within State authorities must not cover the debate which is specifically concerned with the role of the State in socio-legal regulations as applied to the family (including the divorce phenomenon), and with the role of community. With regard to family mutations, community also seems to be seeking new modes of intermediary regulation to replace those of traditional society - for example, the collective care of their children initiated by the divorced parents (BUISSON et al., 1984) or of the Australian project, "Neighbourhood Family Resource Centres", managed by parents (EDGAR and OCHILTREE, 1982).

3 - THE LAW AS AN ELEMENT OF SOCIO-LEGAL REGULATION -

The law itself cannot avoid the pluralism and contradictions which the judiciary institution is experiencing.

We must also dismiss here the idea of the law's having a rational position when confronted by social change and the evolution of morals. First because the legal production process is not only the implementation of a unique intention, of a juridical rationality and the application of a law "formal logic". It is above all eminently political. Divergent and conflicting social forces express themselves throughout this process and legislative work can bear the mark of compromise (COMMAILLE et MARMIER-CHAMPENOIS, 1981). Contradictions within the rule of law itself and its multiple components can arise from this "alchemy".

Such is the case in France, where there is a contradiction between the divorce law of July 11, 1975 and its decree order of application concerning divorce requested by one party and accepted by the

other. In the law, for this type of divorce, the judge pronounces the divorce. The decree order, however, specifies that it falls upon the courts to pronounce it. Thus one goes from law to decree, from a consentual procedure to a conflictual one. This has led a legal commentator to remark : "A strange problem : must judges apply the law ... or the decrees ?" (SICARD, 1977).

The same is true in the German Federal Republic. In the framework of the new divorce law of June 14, 1976, the judge must "... simultaneously apply (in the same divorce case) the rules of two codes of procedure which are different and incompatible in principle : the codes of conflictual and consentual procedure" (MEULDERS, 1984).

The idea of a rational positioning of the law allows up also to assume that there is an implied mechanical adjustment between law and social practices, between legislative change and social one. It so happens that the relationship is not as a simple as would have us believe the more or less explicit conception, according to which change in the law causes social change or, in the disenchanted, "hyper-juridical" ("juridiste" in the French original) version, social change requires change in the law. The relationship does appear appreciably more complex.

The law is already nothing but an element in a system where act other agencies creative of norms which belong to the social sphere or, more precisely, to "infra-law" (infra-droit" in the French original) (ARNAUD, 1981). What is law's part in this system of socio-legal regulation ? It is an integrant one, but only as an intermediary variable or as a part of a system in which the authorities instructed to apply it also intervene : essentially the law in practice. The latter participates, indeed, in social change, adjusts to it and its evolution precedes legislative reform or even makes it unnecessary. (Reforms which are juridically very close, can thus have various effects due to the differences existing, from a country to the next, either in the tensions (pre-dating the reform) between the law in the book and the law in practice or in the ways the judicial authorities enforce the new law, "making it own", interpreting it or "re-writing" it.

A collective reflection has led us to distinguish two types of possible effects in regards to the role played by the law : real effects and symbolic effects (Le divorce en Europe occidentale, 1983).

The real effects can be defined as the direct action of the law on the behavior of social actors.

In the background of a noticeable change in practices and attitudes, keeping the law unchanged leads to low effectiveness if not to "ineffectiveness". On the contrary, real effects on practices can be expected from legislative change. It is what we tried to observe in the above mentioned reflection on the correlations between the legislative changes and the divorce rate evolution in fifteen Western European countries (Le divorce en Europe occidentale, 1983).

And yet the real effects of legislative change seem weak or else negligeable. It is interesting to note that the strong increase in the proportion of divorced couples in all the countries of Western Europe during the four or five decades preceding recent reforms in divorce law coincides with remarkable legislative conservatism !

Changes in divorce behavior in the recent period have in fact preceded legislative change. Moreover, observance of divergent legislative evolution must be countered with the wider similarity in the evolution of behavior. In countries which are culturally and juridically similar, such as Finland, Denmark and Sweden, the law can respectively remain unchanged, be partially amended or even deeply transformed without the behavior of the cohorts being changed in a noticeably different way. A comparaison of Belgian, French and Dutch examples substantiates this premise.

There nevertheless remain partial real effects. If the introduction of divorce by "common consent" does not seem to have had direct repercussions on the frequency of breakdowns, the institution of "breakdown divorce", in most cases, is accompanied with an increase in the number of breakdowns of long duration in the older marriages of the same

year. This is due to the effect of suddenly "de-stocking" divorces which have previously been prevented.

But this does not change the overall observation - the absence of a general correlation between a change in the law and a durable change in the rhythm of divorce-rate increase.

The hypothesis can, nevertheless, be put forward that the absence of real effects of the law does not exclude other types of effects : symbolic effects defined as a "power to act on what is real by acting on what is represented as real" (BOURDIEU, 1982). These effects are difficult to evaluate because they are indirect and slower to show themselves. They impressed us as being able to act both in situations of non-change and change in the law.

In spite of its "ineffectiveness", a nonchanging situation of the lax does not prevent it from exercising a symbolic function or from having an "implicit ideological impact" (MAUGER, 1975) on the social representations of the family or of certain aspects of family life or sexual relations. For example, the extraordinary longevity of the French divorce law of July 27, 1884 gave proof of increasing "ineffectiveness" at the level of real effects but also of permanence in its influence on the social representations of marriage (COMMAILLE, 1982).

A hypothesis on three types of symbolic effects has been put forward in the case where the law undergoes a change (Le divorce en Europe occidentale, 1983) (1) :

- the first is concerned with the social evaluation of divorce. The new law tends to modify opinion on the phenomenon. In the present case, the reforms help to de-stigmatize divorce ;

- the second type corresponds to the effect of institutional "re-stabilization" (rééquilibrage institutionnel in the French original).

(1) We make mention here of collective reflection on the subject. The participants were : J. KELLERHALS, J.F. PERRIN, L. ROUSSEL and J. COMMAILLE.

Altough the reform only deals with a particular segment of the matrimonial system, it does introduce a breakdown which, by a kind of logical contagion, necessarily reverberates throughout the system of laws relative to marriage ;

- the third type of effect is that of "cognitive restructuralization" (restructuration cognitive in the French original) ; in the individual conscience it is equivalent to the contagion observed at the institutional level (see preceding effect). Legislative reform is capable not only of changing an individual's judgment on the phenomenon concerned, but, progressively, his or her appreciations relative to the couple and marital life.

Thus the part taken by law could not fit into a simple causal relation model (cf. figure 1). If law plays a role in the system of socio-legal regulation as applied to the family, it does so in a pluralist and relative way (cf. figure 2).

FIGURE 1

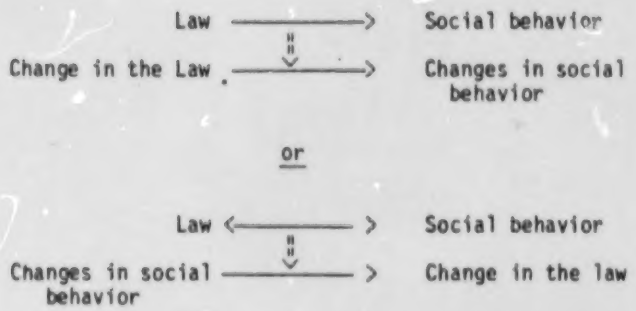
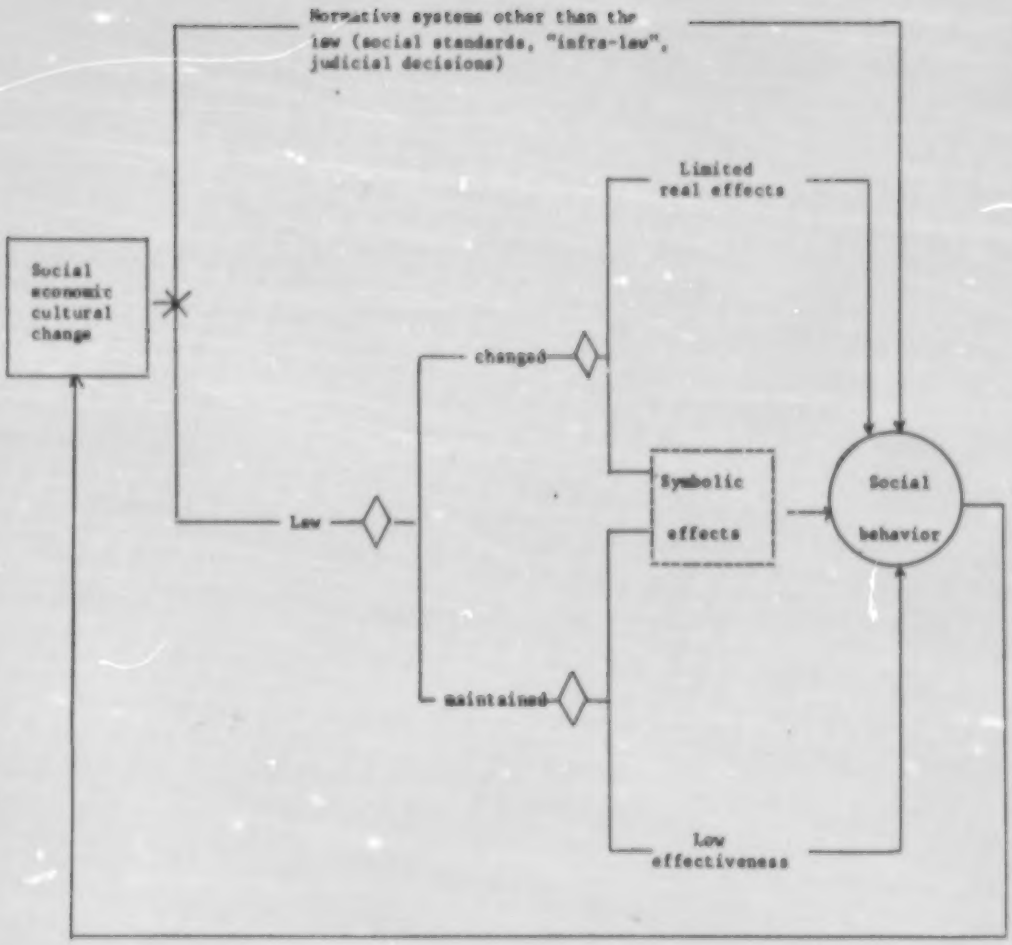


FIGURE 2


Normative systems other than the law (social standards, "infra-law", judicial decisions)
Limited real effects
Social economic cultural change
changed
Symbolic effects
Social behavior
Law
maintained
Low effectiveness

4 - ELEMENTS OF A SOCIOLOGY OF SOCIO-LEGAL REGULATION AS APPLIED TO THE FAMILY -

The analysis of divorce has enabled us to focus on the major principles and the main aspects of what we mean by sociology of socio-legal regulations in the sphere of the family. The opinion that it is an uncertain situation, even one of confusion, is based on the observation of a plurality of logics which give rise to the contradictions in the system of socio-legal regulations as applied to the family. This necessitates going beyond any theoretical model in terms of simple causal relationships, in order to look for a model which integrates the principle of a "complex structure of causalities".

If divorce has acted as the main support for this line of research, it is not the one and only illustration of it. We shall be satisfied with giving several examples among those possible :

4.1. Normative Logic and Social Logic -

Marriage itself fills the bill perfectly as an object of this double logic of socio-legal regulation we have already mentioned (both normative and social). If French civil law continues to represent normative logic (which tends to govern behavior), French social law effectively develops a social logic which takes the social effects of changes into account. And thus do concubines enjoy rights which are closer and closer to those of married people (RUBELLIN-DEVICHI, 1984), because the changes in France are nothing but part of a vast movement on an international scale (I. A. L. S., 1980 ; VAN HOUTTE, 1980).

Many other family matters bear witness to the importance of this social logic beside normative logic : for example, alimony-duty, between parent and child and between ex-spouses. If, in France, normative logic continues to maintain the principle of inter-individual solidarity, social solidarity, in fact, tends more and more to replace inter-individual solidarity (institution of retirement, social aid system, "guaranteed security funds" ("fonds de garantie" in the French original) or insurance for divorce situations, etc.) (VAN HOUTTE et BREDA, 1978). At the same

time, it is certainly within this very social logic that the juridical status of children and their rights are going to find their place, independently of the juridical status of the "parental couple" (MERSON, 1978).

The development of this social logic belongs, in fact, to a process of "socialization of law". This process tends to take the place of law founded on the principle of formal equality between individuals, of the autonomy of will, of the contractual link between individuals. A sort of law develops which integrates social categories : it is at the same time a law for groups and inequality, that is to say a type of law more appropriate to the collective and social character conferred on the problems to be resolved in family matters.

The phenomenon "socialization of law" seems to fit into a movement of "transformation of political and governmental rationality" (for France, at least) which has been going on since the end of the XIXth century. In other words, the setting up of a "solidarist" rationality in terms of social contract which succeeds the ideals of the French Revolution (EWALD, 1983).

But there, as well, it cannot mean subscribing to a diagram of linear evolution. The "socialization of law" fits in well with a transformation in the political rationality which tends to increase the sphere of intervention of the State (GLENDON, 1977). But, on the one hand, this intervention is practiced according to forms and principally to an intensity that both are extremely diverse according to country (ALDOUS and DUMON, 1980) ; on the other, the movement seems to have come to a halt in the context of the crisis the Welfare State is going through (ROSENVALLON 1981). The "hesitations between Welfare State and neo-liberal State" (OST, 1982) seem, in fact, to lead up to a crisis in the "state-solidarity" model and, therefore, to renegociation of the division of responsibilities between the State and families. The latter can be called upon to fulfill compensatory or replacement functions in relation to allowances until now supplied by public structures or competitive systems and to again become "places of production of income composed of work and services". Redistributing roles between family and State can mean "revalorizing a plurality

of collective structures and segments of community (neighborhoods, mutual aid organizations, collective service support structures, etc...) (SGRITTA, 1983). It can also mean administering the social aspect by an "instrumentalism of sociabilities" ("instrumentation des sociabilités" in the French original), thus allowing for "economy in investments in awkward social apparati"(BUISSON et al, 1984).

4.2. Contradictions within Socio-Legal Regulations

As we have already seen in divorce matters, contradictions derive from the plurality of logics of socio-legal regulation. We shall give two examples taken from other family fields.

A recent study on the juridical status of the couple in France underlines the appreciable differences between civil law, which only recognizes marriage as a mode of forming a couple, social law which tends to liken concubines to married people and fiscal law, which by taking only marriage into account, paradoxically favors concubines in relation to married people (Conseil Economique et Social, 1984). In fact, changes (different since 1945) in these three types of law reveal that each one is greatly independent of the other. "These three areas are covered by institutional systems independent of each other, governed by different legislation, often founded on definitions that cannot be compared and applied by distinctive government services by means of special regulations" (Conseil Economique et Social, 1984). What is more, for the same type of law, interpretations of rights and duties can vary according to the government service concerned (Conseil Economique et social, 1984).

But recognition of this incoherence must not simply lead us to think that the solution altogether lies in a simple political desire for better harmonization. A sociological approach to the system of socio-legal regulations applied to the family requires first of all that we examine the reasons for this incoherence. And these reasons are structural ; the diversity in modes of regulation corresponds to the plurality of social expectations - of socio-economical and cultural rationalities as well as of the institutional, juridical and political institutions at work in the field of the family. An examination of the socio-juridical status of women will

give us a last illustration of this (COMMAILLE, 1984).

In figure 3 below, the enumeration of expected social functions is sufficient to emphasize the exceptional role of the woman as a subject in a system of socio-legal regulations applied to the family.

The twofold function micro-social in relation to the family, macro-social in relation to society, the twofold function of reproducer and producer indeed place the woman in a pivotal position between the spheres of domestic and socio-economic regulation systems. In the process of reciprocal regulation of work and family, women's work stands out as the privileged witness to the historic moments of this regulation (BARRERE-MAURISSON, 1984). In the same way, the role of women constantly appears of central importance in the process of reciprocal regulation of the functions of family and of State (SGRITTA, 1983).

But the idea of regulation does not imply perfect "functionality" ("fonctionnalité" in the French original). Woman occupies a central position because of the plurality of social functions which are expected of her, altough perhaps in a totally contradictory way. The wording, in our diagram, of the social expectations of socio-legal regulations, bears witness to these possible contradictions - for example, between demographic policy logics and economic logics.

Law and social policies will themselves render an account of this plurality and of theses contradictions as instruments of regulation by developing different or opposing types of action. For example :

- "egalitarianizing - bilateralizing" actions on statutes (égalitarisation-bilatéralisation in the French original) (cf. the evolution of marriage contracts towards real joint management) ;

- positive discrimination actions ensuring special protection for the woman as seen in her twofold condition of reproducer and producer (for example, regulations concerning the work of pregnant women) ;

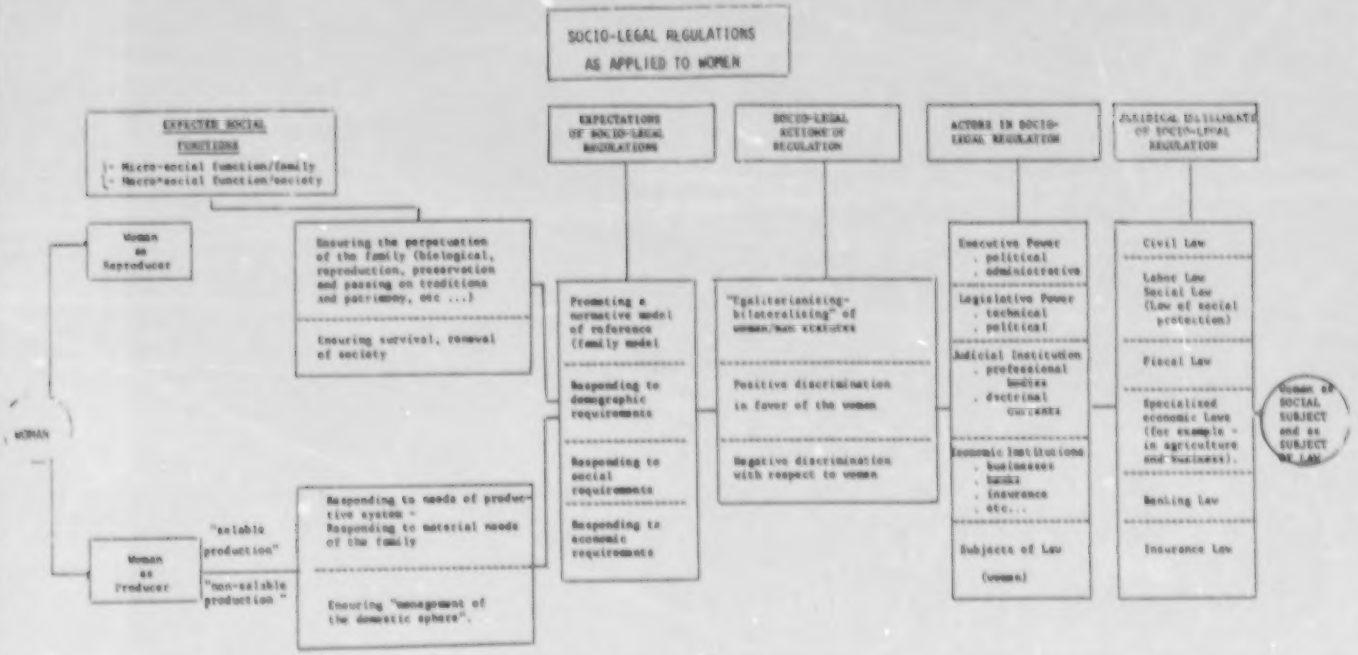
- negative discrimination actions such as those which dealed with women in the same way as minors or, for example, which forced air stewardesses to remain single (SUPIOT, 1983).

The diversity of actors in socio-legal regulation will itself favor the multiplicity of instruments of regulation (branches and types of law, social policies), which will be able to function in complementary action as well as in contradiction or ambivalence (for example, in the area of marriage contracts (COMMAILLE, 1984) or of labor law (SUPIOT, 1983).

This example of socio-legal regulations applied to women confirms the need to integrate, with the same model (concerning both sociology of the family and sociology of law taken as political sociology), the totality of social, professional (pertaining to agents of regulation), economic, political and juridical logics which make up the institution we call the family.

This theoretical model, at the very foundation of our sociology of socio-legal regulations, can do naught, as we have seen, but reject any idea of simple causal relationship (NAGEL, 1970). This means building a "plurivocal" (plurivoque in the French original) model, a model of "structural causality"(GURVITCH, 1955), a model striving to integrate all the variables capable of influencing the general process of change in the area of the family.

FIGURE 3



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Thus we only have to make sure of the existence of "complex systems", therefore breaking with all global explanatory theories in a somewhat intellectually totalitarian way (for example, teleological philosophy of History (BOURDIEU, 1980) or philosophical approaches to the author Subject of History (MIAILLE, 1976), or positivist paradigms (SGRITTA, 1983).

Sociology of the family could really profit from not only integrating in its "object" the area of pratices and attitudes but also that of normative and institutional. Any family policy and action can only gain by substituting the complex and multifarious outline of what is real for hyper-causalist outlines. Perhaps it would be worthwhile to be in a position to go beyond retrospective proofs or submission to voluntarism.

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The changing role of law in marital breakdown

by MARGARET HARRISON

Writing over a decade ago, Rheinstein commented that the measure of uniformity so conspicuous in other fields of private law is absent in the area of divorce law, due to the diversity of social factors which determine the patterns of various societies. However, Western civilisation has been characterised by what he calls the struggle between the 'Christian conservative trend' and the 'eudemonistic liberal trend', and laws affecting the prohibition of granting of divorce have reflected the transition from the first trend to the second (Rheinstein, 1972:10). Such laws must also surely reflect the changing characteristics and functions of marriage.

This paper traces the evolution of liberal divorce principles, primarily in Anglo-Australian law, and the concurrent reduction of recourse to legal remedies in the area of divorce itself. It also traces the increase in the role of public law in the economic restructuring of post separation families, and discusses the problems faced by the law in ensuring support for such families.

DIVORCE

English Divorce Legislation

Marriage was theoretically indissoluble in English law until 1857, although there is some evidence that civil courts granted divorces in the twelfth century. Being primarily a sacrament, marriage was important because of its regulation of sexuality and control of inheritance rights, and these aspects made it an important agency of financial and social control. There were, however two exceptions to its indissolubility, although neither proved to be a universal panacea. Firstly, the church claimed sole jurisdiction in matters of marriage (in addition to probate

and the administration of estates), and until 1532 the Pope's sanction enabled a marriage to be dissolved where important reasons of state were involved. Ecclesiastical courts were able to pronounce decrees of nullity based on the many and varied impediments to a valid marriage that could be found, including rigorous prohibitions regarding consanguinity and affinity. Such prohibitions reached absurd results, such as an annulment being based on the fact that the husband was godfather to his wife's cousin (Australian Family Law and the Practice, 1983: Para 102).

A body of procedural and substantive rules developed into canon law which differed from secular law in that it was independent of politically organised society and its ultimate sanction was usually excommunication or the imposition of penance. Adversary civil procedures became relevant during the early period of the Reformation when the quest for re-marriage after nullity proceedings forced ministers to investigate whether or not a repudiation of the marriage had been justified - their inability to do so caused the transfer of the assessment to judicial bodies. During Elizabeth I's reign it was settled that marriage would remain indissoluble, and the Church of England limited the scope of annulment previously available under Roman Catholic canon law. However, half a century after the Queen's death, it was determined that the monarch's dual role of head of state and head of the Church entitled him to dissolve the indissoluble as a matter of special privilege, and thus enable remarriage.

From the late seventeenth century on (despite debates on whether Parliament had the necessary power) parliamentary divorce developed into an accepted but still isolated practice. This provided the second exception to the indissolubility of marriage rule. However, proceedings were both expensive and cumbersome (as indeed were those dealt with by ecclesiastical courts). Between 1715 and 1850, 224 parliamentary divorces were granted (in all but four cases to men) and in 1850 the cost was estimated to be between seven hundred and eight hundred pounds (Rheinstein,

1972:32). It is perhaps significant that usually only wealthy men could avail themselves of these privileges. They, it is said, suffered particularly where divorce was unavailable because of the necessity to regularise their dynastic and property arrangements in the event of a barren or promiscuous wife! The inconvenience was more widely felt with the emergence of the middle class during and after the Industrial Revolution.

The passage of the Divorce and Matrimonial Causes Act of 1857 introduced divorce into England in the form of a law to be administered by a newly created secular court. Unfortunately, this nineteenth century version of a Family Court only lasted 16 years. In 1873 the Court of Divorce and Matrimonial Causes was abolished and its jurisdiction transferred to the Probate, Divorce and Admiralty Division of the High Court, where it remained. The 1857 legislation abolished the jurisdiction of the ecclesiastical courts, but ecclesiastical precedents continued to be used to grant what came to be called a decree of judicial separation. The court's new jurisdiction permitted it to terminate a marriage on the ground of adultery only, for which Matthew 5:32 and 19:9 were used as a biblical justification.

The unequal position of women in mid-nineteenth century society was unashamedly incorporated into the legislation, which required proof by a husband of one act of adultery by a wife, whereas she was obliged to prove her husband's 'aggravated adultery'. Serious social consequences flowed from the decision to end a marriage, particularly in the case of a divorced woman. Finlay has described the 1857 Act as being:

> "in form and content a legalistic instrument. Divorce was conceived of on the basis of a remedy granted at the suit of one party to a marriage, whose legal rights had been infringed by the other. That other party had failed in one of the fundamental, indeed the fundamental obligation to which the marriage relationship gave rise. The process was exactly appropriate to a delictual

> procedure, transacted in an accusatorial setting. An allegation was made and had to be substantiated by appropriate evidence. It might be answered by denials and/or counter allegations." (Finlay, 1978:123).

As the Finer Committee noted, the floodgates were far from opened after the passage of the 1857 Act. Between 1857 and 1900 there was no year in which more than 583 divorces and 57 judicial separations were granted. (Finer, 1974:104 (Vol.2)) It was obviously purely a fault based Act as regards dissolutions, and the court could deny a decree to any petitioning spouse who had committed adultery since the marriage.

A gradual emergence of the eudemonistic liberal trend can be seen in English (and consequently Australian) matrimonial law during the first half of the twentieth century. Although the quest for marital freedom has been consistently opposed by traditionalists (who equate indissolubility of marriage with its actual stability) there has been a steady liberalisation of both social and moral attitudes and the laws governing the organisation of society in response.

The English substantive law remained unchanged until 1923, when a wife also became entitled to a divorce on proof of her husband's unaggravated adultery. In 1937 A.P. Herbert's Act extended the grounds for divorce by adding cruelty, desertion and the first no-fault ground - insanity. Gradually also the relevance of the public interest to divorce was developed, in judgements which looked at marriage breakdown in a progressively wider context.

In 1921 a New Zealand judge remarked during a divorce hearing:

> "It is not conducive to the public interest that men and women should remain bound together in permanence by the bonds of marriage the duties of which have irremediably

failed. Such a condition of marriage in law which is no marriage in fact leads only to immorality and unhappiness".(1)

Similarly, in Blunt v Blunt (1943) AC 517 the House of Lords declared that the public interest might best be served by the termination of a marriage which had completely broken down.

A 1963 amendment to the Matrimonial Causes Act converted collusion from being an absolute bar to divorce into a discretionary bar. This was claimed to be beneficial to long term relationships between former spouses and between them and their children, and as the Finer report describes, it pushed the English law to the verge of consensual divorce. (Finer, 1974: 78, Vol.1)

In 1966 both the Archbishop of Canterbury's Commission and the Law Commission supported irretrievable breakdown as the only desirable basis for divorce - although they differed in the manner by which they considered the breakdown should be ascertained. The Archbishop's Commission found that fault and irretrievable breakdown were mutually incompatible and supported the method of proof of breakdown by inquest, rather than the determination of guilt or innocence of a party to the marriage. It equated the trial of a divorce with a coroner's inquest, with the object of a judicial inquiry into the alleged facts and causes of the death of the marriage. The Law Commission dismissed the inquest as unworkable and considered that a detailed public inquiry would be more distasteful than traditional procedures.

Largely in response to the Law Commision Report the English Divorce Reform Act 1969 came into operation. It provided for divorce on the basis of a single ground called irretrievable breakdown, which was to be established upon proof of one or more of five 'facts' only. Three of these facts were grounded in fault. The result was what Finlay described as an 'excess of

legalism' characterised by the continuation of technical legal arguments and reasoning leading often to 'strained' interpretations, ambiguities and inconsistencies, 'to the survival of doctrines and attitudes of doubtful validity, and having on occasion undesirable and possible unintended results.' (Finlay, 1975:155)

However, a series of progressively broader amendments to the Matrimonial Causes Rules called the 'special procedure' beginning in 1973 has managed to transform the majority of divorces into administrative procedures - since 1975 all undefended divorces, whether or not children are involved, are initially dealt with by a registrar who examines the petitioner's affidavit. If she/he is satisfied that the conditions for divorce exist a certificate is issued and the file is forwarded to the judge who must pronounce the decree nisi in open court. As parties are not required to attend, breakdown provisions are reduced to a formula, the registrar is really unable to ascertain from an affidavit whether the respondent has behaved in a manner to the petitioner such as to justify a decree under for example section 2(b), (that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent), but the marriage is dissolved.

Writing just after the extension of the special procedure to all undefended proceedings was announced by the Lord Chancellor, Bradley argued that:

> "this must be taken as marking the final if enforced rejection of the notion that a judicial hearing and, moreover, one at the highest level, has an important role in influencing attitudes to marriage and divorce." (Bradley, 1976:1204)

The justification for even a judicial presence is far from clear.

THE AUSTRALIAN POSITION

Australian Divorce Legislation

Australian divorce law was influenced decreasingly by English legislation and interpretations between 1857 and 1975. None of the Australian states had an ecclesiastical court and no matrimonial jurisdiction was conferred on any court in Australia until 1860. Despite several requests from officials in the colonies to the Colonial Office for legislation for maintenance and other relief, no permission was given until 1860 when Tasmania passed an Act which gave more liberal divorce than the 1857 English Act. Slightly different acts came into effect between 1863 and 1873 in Western Australia, Queensland, Victoria, South Australia and New South Wales (Australian Family Law and Practice, 1983:112)

In the case of Victoria the rarity and great significance of divorce in the 1860s is illustrated by the requirement that three judges sit on such cases, where only one was required for a murder trial (Charlesworth, 1983:3).

After Federation (1901) the Australian Constitution vested the Commonwealth Parliament with power to make laws with respect to (inter alia) 'Marriage, and divorce and matrimonial causes; and in relation thereto, parental rights and the custody and guardianship of infants' (Section 51 (xxi) and (xxii)). However, apart from some war-influenced social crisis legislation in 1919 and 1945 the Commonwealth did not exercise its powers until December 1959 when the Matrimonial Causes Act was assented to. Prior to this, the states had exercised jurisdiction and over the years their legislation had become increasingly diverse.

The 1959 Act (which came into operation in 1961) unified the law as to principal and ancillary relief. However, under the Matrimonial Causes Act, divorce was granted within a confined structure and the legislation provided a good deal of potential

for judicial intrusion. The onus was on the person seeking a divorce (significantly, described as the petitioner) to prove the existence of one or more of the fourteen grounds set out in the Act. Three of these grounds - insanity, five years separation and presumption of death - were no-fault grounds, but of these, only the separation ground was relied on to any extent.

A petitioner was also required to come to court 'with clean hands' - the court retained the discretion to refuse a decree of dissolution where the petitioner had also committed one of several matrimonial offences since the marriage. The most commonly admitted of these was adultery, details of which had to be provided in writing to the judge for his consideration. Where the ground of separation was relied on, the court had a broad discretion to refuse the decree where, 'by reason of the conduct of the petitioner, whether before or after the separation commenced, or for any other reason, it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest'. (Section 37(1)) In addition, condonation, connivance and collusion were absolute bars to relief (Sections 39 and 40).

The Matrimonial Causes Act came into operation against a background of rarely articulated reasons for upholding the institution of marriage, and in the midst of a 'marriage boom'. McDonald refers to the positive attitudes to marriage that prevailed in the 1950s and 60s, which, combined with years of relative affluence, low unemployment and low interest rates encouraged the setting up of new households. (McDonald, 1982:183)

Therefore, at least as regards the law on the books, the granting of divorce resembled an obstacle race for a petitioner, and the ultimate discretion rested with the judge. As an alternative to dissolution proceedings, nullity proceedings might be instituted on the ground that the marriage was void or voidable.

Proceedings (which did not seek to terminate the marriage) such as judicial separation, restitution of conjugal rights and jactitation of marriage were also available, but very rarely relied on. Their inclusion served to perpetuate the ecclesiastical origins of divorce, whilst playing a very minor role in the actual legal process.

The emphasis on matrimonial behaviour which characterised the dissolution proceedings was also a feature of ancillary provisions. This reinforced the impression that divorce was a punishment for a person guilty of some form of marital misconduct and a privilege for those considered innocent. For example, in maintenance proceedings, the court was able to 'make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage'. (Section 84(1))

The relationship between the divorce itself and the economic and other matters that flowed from it was further strengthened by the practice that the divorce would not be granted unless and until all ancillary disputes were resolved. This allowed the stronger party to manipulate settlements to the possible disadvantage of the other where, for example, one was more anxious to re-marry.

The Matrimonial Causes Act remained in operation from 1961 to 1976, a period during which Australia experienced a considerable degree of social change. For example, the proportion of married women in the work-force increased from 17 per cent in 1961 to 32.8 per cent in 1973, the divorce rate increased from 2.8 per 1,000 married women in 1961 to 7.4 in 1975. The women's movement emerged as a political force in the 1960s and the oral contraceptive was first marketed in 1961 and became the most widely used method of birth control in the following decade. Its use allowed both a deferment of first births, and a decline in ex-nuptial births (Carmichael, 1984:99) and encouraged the separation of marriage from sexual activity.

Given the considerable extent and ramifications of these changes, it is not surprising that legislation considered appropriate for community mores in 1961 was accused, just over a decade later, of being characterised by excessive legalism, high costs, delays and indignities. Rheinstein's theory of the dual law of divorce (the law of the books being remote from the law in action) appeared to operate, at least in the latter years of the legislation. The varied grounds available to petitioners frequently gave them a choice, and the most readily available ground (adultery, which required no waiting period) increased from 17 per cent of all petitions in 1963, to 38 per cent in 1973 (Hansard, 1974:203). As with similar legislation in the United States and Great Britain, approximately 95 per cent of petitions were undefended.

The fault principle was eliminated with the passage of the Family Law Act in 1975. Section 48 stipulates that the irretrievable breakdown of the marriage, as shown by a continuous separation period of at least 12 months, is the only ground upon which an application for dissolution may be based. The decree will not be granted if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed (Section 48(3)) and it has been held that a refusal to grant the divorce in such circumstances must involve a bilateral intention of both spouses to resume cohabitation - the mere wish to resume is not enough (Todd (No.1) 1976 FLC 90-001).

The Family Law Act provides that separation need not involve a mutual decision to terminate the marriage; cohabitation may have been brought to an end by the action or conduct of only one of the parties (Section 49(1)). Separation is also not restricted to the physical withdrawal of one or both parties from the matrimonial home - they may have continued to live in the same residence or rendered some household services to the other (section 49(2)). Provided that one or both of the spouses intends to sever or not resume the marital relationship and then acts on that intention the separation is sufficient for the purpose of indicating irretrievable breakdown of the marriage

(provided, of course that it continues for the 12 month period) Todd (no.2) 1976 FLC 909-008.

The only area in which substantial evidence is required and where Family Court judges have played an active role is in those applications brought under Section 49(2) which permits separation under the same roof. To counter any suggestion that this provision might have enabled 'quickie' divorces to be obtained, the Family court determined that corroborative evidence of the separation alleged is required, and it may well investigate aspects of the matrimonial relationship both before and after the breakdown of the relationship (Pavey (1976) FLC 90-051). Although figures are unfortunately not available, this procedure is believed to be relatively rare.

Corroboration of facts such as the duration of the separation are otherwise very rarely required - whereas until 1972 it was common practice for grounds for dissolution under the Matrimonial Causes Act to be corroborated (Hutton (1972) 18 FLR 228).

Thus the Family Law Act eschewed any transition between fault and no-fault and rejected the dual system of fault and no-fault adopted in the English Divorce Reform Act (1969) and its own predecessor the Matrimonial Causes Act .

Obviously, in the absence of fault grounds, a judge's adjudicative role as regards the determination of principal relief is diminished. With the objectively ascernible period of 12 months separation the court's only direct role where principal relief is concerned is to be satisfied that there is no reasonable likelihood of cohabitation being resumed.

The Family Law Act also severed any ecclesiastical notions (such as judicial separation) which sought to give a petitioner some relief (eg. from the obligation to cohabit) whilst retaining the marriage as a legal entity. However, Australia's 'great leap forward' in family law has in many ways been undertaken

cautiously. There was a great amount of public debate during its laboured passage through Parliament. There were arguments that the legislation would destroy the institution of marriage by making it a contract terminable, without cause, at the will of one party only. A fairly late amendment which sought to allow divorce (where only one party sought it) after a 24 month separation period, with an alternative ground of irretrievable breakdown based on the behaviour of the parties, was defeated by only one vote in the House of Representatives. (Hansard, 1975:2441).

Largely as a result of these debates (which have still not entirely ceased) various checks and balances were introduced into the Family Law Act.

The Institute of Family Studies (one of whose functions is to promote.... the identification of, and development of understanding of, the factors affecting marital and family stability in Australia....) is established under Part XIVA. Section 115 allows the establishment of a Family Law Council, which advises and makes recommendations to the Attorney General concerning (inter alia) the working of the Act and other family law legislation. Several government inquiries into the operation of the Act in general, and maintenance enforcement and property division in particular are in progress or have been completed(2).

The Family Law Act is arguably the most closely monitored piece of federal legislation ever passed and the sensitivity of its provisions was reflected in the fact that until the most recent amendments were debated (when the practice altered) parliamentarians voted according to conscience rather than on party lines. Section 43(a) and (b) of the Act contains policy statements which many find contradictory in legislation of this type. The Family Court is required to have regard to (inter alia)

- the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all other voluntarily entered into for life; and

- the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children.

These phrases are apparently an endorsement of the English Law Commission's 1966 statement that a good divorce law should seek:

(1) to buttress rather than undermine the stability of marriage; and

(2) when, regrettably a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation. (Law Commission: Reform of the Grounds of Divorce: The Field of Choice, 1966:10)

A considerable amount of parliamentary time in 1974 and 1975 was occupied by a discussion of the appropriate length of separation which would prove that a marriage was not salvagable. The most popular durations were one year or two, but many people were concerned that (particularly in marriage characterized by violence) even one year would be excessive without some form of relief. Worries about opening the floodgates of divorce, but stressing marriage, rather than undermining it, and passing legislation which was more progressive than community standards could accept, were expressed.

The concern of many both inside and outside parliament was that an increase in divorce would jeopardize the welfare of children of divorcing parents. Section 63 (which had its origins in Section 71 Matrimonial Causes Act) provides that a decree nisi shall not become absolute unless the court has declared its

satisfaction with the arrangements made for any children of the marriage under 18 (or declares that there are circumstances by reason of which the decree should become absolute notwithstanding that the court is not satisfied with arrangements). A survey of the operation of this section has shown that, despite the lack of uniformity of its application around the country, it is rarely used to block a decree. Its major use appears to be to require the parties to communicate with each other about the welfare of their children (Harrison, 1983).

An amendment to the Family Law Act which attracted some controversy was passed in November 1983. Influenced by the English special procedure, the original amendment sought to dispense with the requirement of personal attendance at dissolution proceedings where the respondent consented to the procedure.

Prior to the amendment, where there was no child of the marriage, a person represented by a legal practitioner was not required to attend the hearing unless the court directed otherwise - where there was such a child, attendance was required and the parent may be asked to give oral evidence concerning the child's welfare (Regulation 106).

Opposition to the amendment was vociferous and emotional and it was obviously important to a sizeable minority in the community. Senator Shirley Walters argued that the failure to attend the dissolution proceedings would be terribly easy and 'no trauma at all will be involved' (Hansard, 1983:178). She unsuccessfully moved an amendment which if passed would have required both parties to attend court where there were dissolution proceedings, unless the court in its discretion determined that this was impractical. Apparently seeking a more inquisitorial role for the court, the senator argued that a judge could not assess whether a breakdown of the marriage had really occurred merely by reading a form.

Finally, the amendment was modified, and as passed divorce on the papers is available where the proceedings are undefended, there are no children of the marriage under 18, the applicant has requested the court to determine the proceedings in the absence of the parties, and the respondent has not objected to the procedure (Section 98A)

As over 60 per cent of divorce applications involve children, the scope of the amendment is very limited. As it is, the simplicity of divorce proceedings has minimised the need for legal representation, and for the 12 month period ending December 31, 1983 31 per cent of divorce applications were 'in person' applications, that is, applicants completed their own documentation and appeared in court on their own behalf. While the debate about the inclusion of the amendment raged in Parliament, far more substantial and far-reaching amendments were passed almost un-noticed. (3)

A major characteristic of Family Law Act divorce proceedings is their brevity. The applicant's presence (or that of a legal representative) is required at most to enable the judge to verify arrangements made for the children, or a separation date. It is to that extent a passive role and there is no opportunity for participation; he or she cannot explain or justify the reasons for the marriage breakdown amd it is virtually impossible to defend an application.

The establishment by the Family Law Act of a specially staffed and separate federal Family Court was a significant development in the revision of Australia's divorce laws. Surprisingly, in retrospect, it was considered relatively late in that revision, appearing in the Senate Standing Committee's report of October 1974.

Whilst the Matrimonial Causes Act was in operation, divorces and ancillary relief were obtained in the Supreme Court, with some jurisdiction, (particularly in the area of maintenance)

remaining with magistrates. Supreme Court judges were allocated matrimonial cases along with their other judicial load and they (along with counsel who appeared before them) were wigged and gowned, as was considered appropriate for their standing. Many judges, appointed to the Supreme Court from the highest echelon of the bar, would have had no or very little experience of family law and practice. The Family Law Act provided that the family court would be closed to ensure privacy of proceedings (it was opened as a result of the 1983 amendments), that wigs and gowns would be dispensed with and that judges be appointed on the basis of their suitability to deal with matters of family law 'by reason of their training, experience and personality' (Section 22(2)(b)).

The emphasis was on conciliation and helping, and a court counselling service was seen as an integral part of the process of resolving disputes, particularly where the welfare of children was in issue. For those experiencing marriage breakdown the legal process changed perceptibly and substantially after the passage of the Family Law Act. These changes were both substantive and procedural, in that both the law and the forum for administering it altered.

LAW AND FINANCIAL SUPPORT

As several family law commentators have remarked, the withdrawal of the state from divorce (as well as marriage) regulation is not found in the ancillary areas of economic support and children's welfare (Glendon, 1977:245).

These areas, conversely, have become more complex, arguably more intrusive, and more sensitive to the requirements of weaker members in family disputes.

As has been shown, Australia's divorce law is only marginally concerned with divorce itself. This has been an evolutionary

process and one which received a strong fillip with the introduction of the Family Law Act in 1976. Whilst the Act contains provisions for counselling and scrutiny of the arrangements made for children, these are rarely made use of in the context of divorce per se.

However, in ancillary areas the law is quite detailed and comprehensive. For example, the Act as amended includes criteria which the court is required to consider in proceedings involving children of the marriage, and it has always contained quite detailed criteria which must be taken into account when there are maintenance and property disputes. These still permit a considerable amount of judicial discretion, and in the absence of a system of fixed entitlements to matrimonial property, this discretion is particularly apparent in disputes involving such property. In countries (such as New Zealand) where a community of property system operates, detailed legislation is required to set out the entitlements of spouses to various categories of property.

In the major area of economic support for post-separation families the role of law is central, although its efficacy is questionable.

One persistent problem has been the failure to enforce court ordered support by the liable relative. Prior to the introduction of the Family Law Act imprisonment was available as a coercive instrument to enforce the payment of maintenance once an order had been made. Section 107 abolished this rather archaic measure. However a spouse may be guilty of contempt (section 108) by reason of his/her wilful failure to pay. The courts have proved reluctant to imprison or fine for contempt unless 'wilful disobedience of an order to pay maintenance (can) be established either by facts from which a refusal to pay maintenance can be inferred or from a failure to pay maintenance despite the existence of funds or assets from which the maintenance could be paid" (Heliar (1980) FLC 90-805 at p.75,077).

Assuming that the criminal law plays no role in assuring financial support for post-separation families, the choices for intervention by the law are reduced to three:

(i) public law (via the social security and/or taxation systems);

(ii) private law (pursuing the liable relative for his/her ordered contribution);

(iii) a combination of both (i) and (ii) (in varying degrees, according to the means of the parties and other relevant circumstances).

In addition, philosophical and policy debates underpin both the nature of legal intervention and its possible 'success'.

The two central and inter-related issues in the family support debate are:

(1) How to resolve the inevitable conflict between the 'new' family law view of divorce as representing the termination of a legal relationship, and maintenance which is (to a greater or lesser extent) a continuing obligation.

(2) What exactly is the relationship between public and private law? This is essentially the argument about who pays - the liable relative or the taxpayer - and whether the source of payment should vary according to whether spousal or child maintenance is involved.

The trend already apparent in the United States of America and Western Europe that spousal maintenance is an exceptional consequence of divorce is well entrenched in Australian family law. As mentioned previously, the Acts's refusal to countenance considerations of matrimonial fault has altered the rather simplistic concerns of who has earned (by reason of his/her

behaviour) the right to a monetary allowance after the 'death' of the marriage. In addition, changing social attitudes towards the role of women in marriage, coupled with objective data regarding the work-force participation of married women, have eliminated the notions of marital dependency that characterized post-war legal systems. Section 75(2) (h) of the Act permits the granting of rehabilitative maintenance, but the extent of its use is unknown.

The basic and necessary requirements for a spousal maintenance order under the Family Law Act are need and capacity. The court will first assess whether the applicant is unable to support him/herself adequately by reason of:

(a) having the care and control of a child of the marriage who has not attained the age of 18 years;

(b) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(c) for any other adequate reason. (Section 72)

If the inability is shown to exist, the respondent's means and reasonable needs are examined, and if she/he has the ability to pay the question of quantum is addressed.

Maintenance for children is based on a different premise. Section 73 of the Act provides that the parties to a marriage are liable, according to their respective financial resources, to maintain children of the marriage who have not reached 18 years. As with Section 72, Section 73 is not restricted to terminating marriages, but applies also to parties in continuing marriages (Eliades (1981) FLC 91-022). Orders are quite frequently made following a separation to ensure that a non-custodial parent meets these responsibilities. However, the Report of the National Maintenance Inquiry estimated that only about 40 per

cent of orders made (presumably including some for spousal maintenance) are fully complied with, and somewhere near 40 per cent are never paid at all. (A Maintenance Agency for Australia, 1984:14).

Failure to comply with an order results from refusal/ unwillingness to do so or insufficient capacity to pay (which may occur because of remarriage and the assumption of obligations to a subsequent family).

In the face of such a poor enforcement record the clean break principle provides obvious advantages. In addition, it is espoused in several sections of the Act which aim at terminating financial proceedings between the parties (see Sections 81,87) wherever possible. The poor enforcement rate undoubtedly serves as a catalyst to reliance on social security pensions and benefits as a primary source of post-separation support. In the financial year ending June 30, 1983, 79,026 separated and divorced people were in receipt of Supporting Parents Benefit and 63,419 separated and divorced people were in receipt of Widows A Pension. (Department of Social Security, 1984)

The collision course of public and private law is nowhere more apparent in Australia than in the inter-relationship of maintenance and social security. Section 75(2) (f) of the Family Law Act provides that in respect of maintenance and, (by reason of Section 79(4) (e)), property disputes the eligibility of a person for a pension, allowance or benefit and its rate must be taken into account. The aims of this provision were two fold. It was designed to protect the payee where default occurred, and also to protect the payer from paying a disproportionately high percentage of his/her income which would cause suffering to the payee and any subsequent dependents, and also increase the risk of non-compliance. At least in the latter years of the operation of the Matrimonial Causes Act pensions were frequently taken into account when financial support was being assessed, but there was no statutory authority for this.

The extent to which social security revenue is seen as a form of primary support brings into issue the extent to which marriage breakdown and its economic consequences is a community responsibility and/or the responsibility of the liable relative. In support of the wider responsibility argument, marriage breakdown can be seen as one of life's many vicissitudes (in addition to unemployment, illness and vehicle and industrial accidents) which the community as a whole must bear. New divorce laws appear to accentuate this no fault/no responsibility approach.

The more commonly held view was expressed in the report of the Joint Select Committee on the Family Law Act:

> "The law should reinforce the policy that, wherever possible, families should be supported by private rather than public means. In furtherance of this policy, relatives should not be in a position to transfer their obligations to support relatives to the community at large where they are, financially, in a position to contribute to the support of those relatives. At the same time those without adequate means of support should be entitled to sustenance from the State to the extent of their need."
> (Family Law In Australia, 1980, 77 vol.1)

Few would espouse the principle that family support, regardless of the inability of a party to pay, should remain a purely private responsibility.

Recent enquiries and/or legislation in the United Kingdom and Australia place primary emphasis on the private obligation to maintain wherever possible. In contrast, New Zealand introduced its liable parent contribution scheme in 1981. This scheme eliminates a court assessment of maintenance where a pension is being paid and substitutes <u>administrative</u> assessment in its place. The scheme operates by requiring the non-custodial parent

to contribute towards the cost of the domestic purposes benefit (cf. Australia's supporting parents benefit). The identification of the liable parent requires him/her to provide particulars of his/her financial circumstance and from these details the Department of Social Welfare assesses what the level of contribution should be, in accordance with a set formula. As the contribution cannot exceed the amount of the benefit the applicant cannot receive a higher amount, but the amount of the benefit itself is guaranteed. There is however no direct financial relationship between the parties to the marriage (Atkin, 1981:339)

As the Australian Maintenance Inquiry report has commented in describing the New Zealand scheme:

> 'the concept of administrative assessment is most readily grasped when it is the State itself which is seeking to obtain funds to offset its welfare expenditures. When maintenance is seen only as a private debt, traditional concepts of the appropriateness of a role for courts operating in an adversarial framework retain primacy: what is clear is that the New Zealand development points out the nature of maintenance, even in its traditional framework, as not a private obligation, and yet not wholly a public one, but rather as a quasi-public obligation.'
> (A maintenance Agency for Australia, 1984:114)

To look at the family support-social security nexus in more detail it is first necessary to explain how the Family Court interprets the rather controversial section 75(2) (f). The first comment to be made is that the interpretation has not been consistent.

Different interpretations occur because some judges take social security entitlements into account when assessing the <u>needs</u> of the spouse (section 72), while others only consider them when

determining the amount of maintenance. The differences in these approaches are of more than academic interest. If the first prevails an applicant already entitled to a pension may be considered to be capable of supporting him/herself adequately, and therefore no maintenance obligation from the liable relative would arise. If the second approach prevails (as it commonly does) there is an assumption that the primary financial responsibility lies with the liable relative rather than the taxpayer - the pension or benefit only becomes a source of support where the liable relative is incapable of or unwilling to provide sufficient (or any) support.

In Murkin (1980) FLC 90-806 at page 75,081, Nygh J expressed his support for a quantum approach:

> "A woman who is dependent on payments of social security benefits is not able to support herself. The question then arises by whom she should be supported - by the former husband or by social security, and to what extent. If that distinction is kept in mind, some of the confusion which has arisen, through arguments that because social security is or will be available, the wife is not 'in need' can be easily resolved. The criteria of need and ability to support one's self are not identical".

Earlier, in Kajewski (1978) FLC 90-472 Lindenmayer J had held that it was an error to take the wife's pension entitlement into account in determining whether she had the ability to support herself adequately.

This entitlement should only be taken into account after an enquiry into the wife's needs and means (excluding the pension) finds that she is unable to support herself adequately, and a similar enquiry into the husband's means and expenditure finds that he has the ability to contribute to her support. The pension entitlement thus affects the size of his contribution.

Both the supporting parents and the class A widow's pension are subject to an income test which at the time of writing is $30 per week plus $6 for each dependent child. Maintenance is treated as income, and any maintenance which exceeds the 'free area' reduces the pension by 50 cents in the dollar.

Similar dilemmas regarding the primacy (or otherwise) of social security payments have occurred in other jurisdictions. In England cases such as Ashley (1965) 3 ALL ER 554 established the principle that a wife's potential entitlement to supplementary benefit is an irrelevant consideration when a maintenance order is made, and should not have the effect of reducing a husband's liability. However, if compliance with a maintenance order would place a husband below subsistence level, the court may then take the wife's eligibility for supplementary benefit into account: Barnes (1972) 2 ALL ER 872. Lunn (1978) refers to this as the:

> "never-ending battle between the husband's obligation to support his wife and family, and the availability of social security benefits for the wife and children as citizens in their own right" (112)

Australian legal practitioners, magistrates and judges are aware of the provisions of the Social Services Act, and courts are usually prepared to maximise an applicant's entitlement, the liable spouse with modest means 'topping up' the pension: Mehrtens (1977) FLC 90-288.

Judges frequently have to take a pragmatic approach in maintenance disputes, and look to the effect of certain financial arrangements as well as their philosophical justification. In Brady (1978) FLC 90-513 the wife was entitled to $57 per week special benefit as caretaker of her mentally retarded child. The Department of Social Security encouraged her to apply for a maintenance order of $80 per week, a $70 increase on what her husband had been paying. At that time $6 per week was the maximum income she could obtain and any excess was directly

deducted from the benefit. The court found that both the wife's required amount and the husband's capacity to pay were $60 per week which would bring about the cessation of the special benefit. The wife would thus be $3 per week better off. Bulley J said, (at pages 77,703-4):

> "If I ordered the husband to pay such sum by way of maintenance of the wife her special benefits payments would totally cease and if the said $60 per week were regularly paid by the husband, the wife would be better off by $2.55 per week.... the wife's financial position and standard of living would not improve, the husband's financial position would be drastically reduced, the wife would lose the security of the regular pension payments, the husband would have this substantial financial burden for an indefinite time to come".

The husband was subsequently ordered to pay a lump sum of $10,000 to his wife (an amount which would not affect her entitlement to the maximum special benefit) plus $6 per week maintenance.

Most privately negotiated and ordered maintenance obligations are believed to be lower than the 'free area'. This may result from a number of factors: the provision of S.75(2) (f) which introduces the possibility of a pension supplement, the inability of many respondents to pay more than a modest amount, or a realistic acceptance by judges or magistrates that lower orders have a greater chance of being complied with than higher ones.

There are three additional threads that connect social security and family law:

1. Sections 62(3) and 83AAD of the Social Services Act provide that neither the widows pension nor the supporting parents benefit shall be granted unless the applicant has taken such action as the Director-General considers reasonable to obtain maintenance from the other spouse.

It has been argued that these requirements are a cause of unnecessary litigation and disharmony, whilst the Department of Social Security has explained that they are designed 'to ensure that people who are in a position to do so are not relieved of their obligation to contribute to the support of their families' (Family Law in Australia, 1980:73). In fact, the provisions have remained inactive for much of the life of the Family Law Act, although they have not been repealed.

2. In addition, to qualify for a widow's pension, a separated wife must prove desertion, a fault based criterion which runs directly against the spirit and practice of the Family Law Act.

Such anomalous provisions in complementary legislation do nothing to help people in need, nor do they instil any respect for the legal system amongst its clients.

3. The third, and associated, thread involves judicial scrutiny of privately negotiated maintenance agreements which serve to terminate the Family Court's powers in financial matters. These agreements are drafted pursuant to section 87 and are ineffective until approved by the Court. To be approved they must be 'proper' with respect to financial matters. The criteria of what is 'proper' in these circumstances include the receipt of independent legal advice by both parties and their presence (or the presence of their legal advisor) when the agreement is approved. The court must also be satisfied that the interests of any minor children are protected, that the parties fully understand their rights and obligations under the agreement, particularly that it is in substitution of rights under the financial provisions of the Act.

Several judges in recent years have expressed displeasure at the 'sweetheart deals' in which, by way of a Section 87 agreement, a wife has relinquished her right to future maintenance and thus has become a recipient of social security benefits.

In Bailey (1981) FLC 91-041 Fogarty J refused to approve such an agreement and differentiated the case where both parties are working and earning reasonable incomes (where such an arrangement would be 'highly attractive and consistent with Section 81) from that where the wife was the custodian of young children or for some other reason was unable to obtain employment. The husband in Bailey was considered to be able to pay maintenance and Fogarty J at page 76,351 said:

> "In a case such as this where one is talking about a wife in her early 30s who is presently on social security payments and where in the current economic climate it is unlikely that she will be able to obtain gainful employment, the future cost to the community, considered actuarily, for a wife in her early 30s running through to her 60s or 70s amounts to a massive sum. To suggest that a husband who is earning in excess of $17,000 gross is able to transfer to the community that responsibility for a modest capital sum seems to me to run counter to the public interest.'

Once again, this solution to a perceived problem is not without precedent. County Court judges in England have at times refused to declare their satisfaction with arrangements made for children (thereby withholding a decree) where children were being, in their view, unnecessarily supported out of public funds: Cook, (unreported) March 1978.

It has been argued that in Australia recourse to social security payments as a component of maintenance is justifiable, as the taxation system provides no incentives for the payment of maintenance (Australian Family Law and Practice, 1983: 26-574).

For Australian purposes the unit of taxation for personal income tax is the individual rather than the couple (as in the United Kingdom) or the family (as in France). Section 23(1) of the Income Tax Assessment Act provides that income in the form of maintenance payments received by a woman from her husband or former husband is non-taxable (where maintenance is received by a man from his former wife this exemption does not apply). There is no provision which permits the payer of maintenance to deduct the amounts paid from his/her assessable income; hence the argument that a taxpayer may be entitled to some relief in the form of payment of a pension or benefit to his former wife as part satisfaction of his private financial responsibility to her.

The question of tax deductibility of maintenance payments has been raised by both the Parliamentary Joint Select Committee and the Maintenance Enforcement Inquiry, but has never been fully considered. However, the arguments against such deductibility have been raised and can be briefly summarized as:

(i) the policy question of separated/divorced couples gaining financial advantages which are not available to married couples where housekeeping etc. money is paid by one spouse to the other;

(ii) the financial cost of such a deduction to the community in the form of lost revenue;

(iii) tax deductions benefit higher income earners far more than those on average or below average incomes.

(iv) there is a possibility that artificial tax splitting devices would result.

At present divorced parents who are caring personally for one or

more children are entitled to a sole parent rebate of $780, regardless of the number of children involved. Otherwise taxation legislation plays a very small role in the financial affairs of post separation families. Any discussions in this country regarding its involvement are likely to be in the context of encouraging maintenance payments from otherwise reluctant taxpayers, and are equally likely to be hotly debated.

CONCLUSION

Modern family law is characterized by its secular principles, moral objectivity and pragmatism. The Australian Family Law Act, a product of the period of modern family law, embodies these characteristics in its provisions. Under the Act principal and ancillary relief are separately dealt with, in that the granting of the former is not dependent on settlement of the latter. The granting of divorce occurs with a minimum degree of judicial intervention or regulation, although legislators and the legislation continue to assert the primacy of stable marriage.

However, the financial repercussions of marriage breakdown have caused a re-assessment of both the responsibilities to its vulnerable participants and the source of those responsibilities. The increased role played by public law (via the social security and, to a lesser extent, the taxation systems) has produced the argument that the economic cost of marriage breakdown is falling too heavily on the taxpaying community.

The solution to this dilemma is neither easy nor imminent, and the issue is unlikely to be adequately debated, let alone resolved, until more information is available. The English Policy Studies Centre briefing paper on the Matrimonial and Family Proceedings Bill has drawn attention to the dearth of data on:

(i) the importance of maintenance to the incomes of divorced people and;

(ii) the financial burden such payments impose on the payer and his/her second family (1983:20). The questions of equity and need are particularly difficult to answer where maintenance payments are offset against pension entitlements, and the family's standard of living is consequently not improved.

There are contradictions contained in proposals so far suggested and these also are hampering the debate. For example, the three primary objectives identified by the inquiry team examining the establishment of a national maintenance enforecement agency were:

(i) the reduction of hardships of supporting parents;

(ii) preservation of the integrity of the judicial system by ensuring that orders made are enforced; and

(iii) reduction of social security expenditure, insofar as it is possible and reasonable. (A Maintenance Agency for Australia, 1984:291)

It is arguable that aims (i) and (iii) are inconsistent with each other, and that any 'reasonable' reduction of social security expenditure would result in continuing hardship for supporting parents.

These issues, so comprehensively dealt with by the Finer Committee a decade ago, are being confronted in Australia today.

FOOTNOTES

1. Mason v Mason (1921) N.Z.L.R. 955 at 961 per Salmond J. cited in the Finer report (Volume 1) at page 76.

2. For example, the Parliamentary Joint Select Committee was appointed to inquire into and report on (inter alia) the effect of the Family Law Act on the institution of marriage and the family and the grounds of divorce and whether there should be other grounds. The Committee reported to Parliament in August, 1980.

   In March 1983 the Attorney-General issued terms of reference to a departmental inquiry team which was to inquire into maintenance systems and make recommendations on the establishment of a national agency to improve significantly maintenance enforcement and collection within Australia. The inquiry's report was published in January 1984.

   In June 1983 the Attorney General issued terms of reference by which the Australian Law Reform Commission was required to examine (inter alia) whether any changes should be made to the rights of parties to a marriage in respect of property acquired by either or both of them before, during or after their marriage, including their rights during and upon the dissolution of the marriage. This examination includes a consideration of whether the parties to a marriage should be entitled to a fixed proportion of some or all of the property. The Law Reform Commission is required to report not later than 31 December 1985.

3. For example, the Family Court's jurisdiction concerning children was expanded to cover step-children, foster children and medical procedure children, property proceedings were permitted to be started without the need for concurrent,

pending or completed proceedings for principal relief, custody criteria were included, and a discretion was given to the court to attach a power of arrest to an injunction.

In addition, as an indication of the extent to which collusion is a term of the past, section 44(1A) permits an application for dissolution or nullity to be instituted by either party to the marriage or jointly by both parties to the marriage.

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Legal systems and families

by JOHN EEKELAAR

In this paper I want to re-state, and develop, an analysis I originally put forward elsewhere [1] concerning the relationship between law and family living. Law, I have argued, can be characterized as performing three types of social function. One, which I term "regulatory", is concerned with providing a mechanism for the allocation and devolution of resources on the basis of a set of assumptions about the nature of society which are taken as given. [2] Another, which I call "coercive", follows the traditional Marxist analysis of law as an instrument of class oppression. However such a view of law seems also to underlie classic positivist accounts of law in terms of "command" theory. [3] The elements of a third function were drawn from the writings of Michel Foucault (1979a) (1979b) as developed by Jacques Donzelot (1980). This is seen to lie in the use of law as a mechanism for transmitting normative standards, drawn from a prevalent ideology, and dispersing it among the population at large. I call this "normative" law. In both its "coercive" and "normative" aspects, law is used as a means of social control. But the two methods are worth keeping distinct. My thesis is that we can, at different times, detect some or all of these functions of law in relation to family living.

Normative, regulatory and coercive law in the nineteenth century

During the nineteenth century an outstanding feature of that body of law which we conventionally call "family law" was its irrelevance for the bulk of the population. Writing with respect to the United States during that period, Max

Rheinstein observed that "the law of marital property, succession on death, support, divorce, parental power and guardianship took elaborate care of the needs of owners of property but paid scarce attention to those of the property-less." [4] The same can be said of the common law world generally. Furthermore, the law was primarily concerned with family relationships over time. The strict requirements for entering marriage, laid down in Lord Hardwicke's Marriage Act of 1753, reflected the crucial significance of marriage at that time for the inter-generational transmission of property. By marriage, the groom's forebears could add to the existing stock of family wealth. For his successors, their legitimate status ensured the devolution of family wealth to them. A wife's movable property would pass to her husband on marriage, but as the fruits of commerce began to compete with land as a basis of wealth, property lawyers developed the device of settling such property on a wife "for her separate use", not so much to protect the wife's interests against those of her husband, but to safeguard her family's fortune should the marriage break down. [5] The legal regulation of the termination of marriage was confined to the well-off. But the ecclesiastical courts (who might grant a divorce a mensa et thoro) could not, and Parliament (which could enact a divorce a vinculo) in practice did not, use this occasion to re-direct the destination which the husband's property would take by will or the laws of intestate succession. At most, the courts (and Parliament) would use their power to make alimentary provision as a means of restoring to an innocent wife some (not usually all) of the wealth she (or her family) had contributed to the marriage. [6]

We can say that this type of law was primarily regulatory. Family systems were used to deploy wealth and status. A key feature of these systems was male dominance. The law simply provided the means for perpetuating this arrangement. It was reluctant to disturb its smooth operation. So important was the principle of legitimate succession through the male line that fathers were given an almost absolute right to the possession of their legitimate children, quite irrespective of the children's relationships with their mother. So it was that courts would refuse to deprive a father of the custody of a child even if it was still at the breast. [7] Nor would the moral delinquency of the father normally displace the operation of the legal mechanism giving effect to established male supremacy. [8] However, there were limits. A father, like the poet Shelley, whose actions or beliefs were considered likely to corrupt the child and thereby threaten both the perceived well-being of the child and of society might lose custody. [9] Here the law moves away from mere regulation and into the dual functions of coercion (the repression of undesired behaviour) and the transmission of norms (the promotion of desired precepts in upbringing children). But this is in only a narrow area and affected but a tiny fragment of the population.

Insofar as the law touched the family life of the bulk of the population, it wore its coerceive aspect. From Tudor times [10] the law sought to compel the lineal blood relatives of any poor person unable to work to support that person. It is here, however, where we first see legal concern with the family as a contemporaneous economic entity, for in 1718 justices were empowered to seize chattels and enter into occupation of the land of a husband who had left his family chargeable to the

parish, and to provide for his family from the sale of the chattels and the rents of the land. [11] It was not, however, until 1834 that a wife was put in a similar position to that of lineal blood relatives by the provision that relief given to her should be treated as a loan to the husband, recoverable against him by the poor law authorities. Similarly, that Act placed a husband under an obligation with respect to "the children of any woman he marries" who become chargeable to poor relief. [12] We have moved from liability based solely upon blood relationship to the idea that a factual social entity (the family) must look to its economic support towards a specific individual (the husband).

It is important to see what the law was doing in taking this step. On the one hand we see the policy, later exemplified in its fullest form in the Victorian poor law, [13] of forcing men into the labour market. This was thought necessary not only on economic grounds, but also for reasons of social stability. But the law was doing more than that. It was attempting to impose an ethic of family responsibility. Men must work, but they must also support their families with their wages. Stable family units based upon marriage seemed the optimal means of achieving this. The lengths to which legal policy could go to impose this scheme is illustrated by the repeal, in the Poor Law Reform Act of 1834, of any obligation of the father to support his illegitimate child. In this way, by placing the "burden, cost and obloquy" of illegitimate pregnancy on the woman, it was hoped to promote conception within marriage. [14] That particular policy failed, and was reversed ten years later. But although the mother, and later the poor law authorities themselves, were given the right to claim against

the father, poor law policy maintained its discrimination against mothers of illegitimate children. The case of illegitimacy reveals one of the major problems facing normative law. The law seeks to transmit values, to induce patterns of behaviour. It is not primarily concerned with punishment, deprivation, alienation. Nevertheless, it may use those methods to achieve its ends. But here is the dilemma. Punishment can throw up more problems than it solves. Withdrawal of civil remedies from unmarried mothers, or from (guilty) divorced wives, just as punishing neglectful or abusive parents, can place greater burdens on community resources and lead to conflicts with other societal values: the wrongness of unequal application of the law as between men and women, [15] and the unfairness of visiting the effects of the punishment on innocent children.

At the heart of this policy was the conception that the burden of child care should primarily be borne by the family. The woman would provide the immediate care of the children; the father the economic support of the unit. I am not suggesting that this policy represented a major departure. Family sociologists now believe that the conjugal family, as a geographic and economic unit, with a relatively small number of resident children, has long been established in our society. [16] What seems to be clear is that the rapid industrialisation and urbanisation of early nineteenth century Britain put this structure under strain. There occurred a shift in the economic functioning of the family which was to have profound consequences. Prior to industrialisation, in a peasant society, the family was itself a unit of production in which all its members, adult and child, played a part. Although this

pattern persisted to some degree throughout the early industrial revolution, with the women and children producing income from their own employment, industrial organisation initiated a change, now only fully evident, whereby "one or more household members leaves the domestic arena and each is remunerated by outsiders on a basis which normally takes no account of his or her family situation. The wage received is the personal property of the individual, is dependent on the individual's own level of activity and achievement, and is paid to the individual in private leaving him or her to negotiate with the rest of the family over how and to what extent the money is to be distributed in order to satisfy their wants." [17] No longer, it seemed, could it be taken for granted that the income received by a family member would be passed on to the good of the whole family unit. The moral entrepeneurs of the early nineteenth century were thus vitally concerned with restoring this aspect of family responsibility. Thus a Report of Hugh Tremenheere, the first mines inspector, in 1846, complained that alcohol had become particularly destructive of family life as the husband drank away his excess earnings "instead of bracing up his energies to do his duty to his family, by economising his additional earnings, paying for the schooling of his children, providing more furniture and more clothing, and giving to his habitation the appearance of being the home of a rational man." [18] The problem of family responsibility is linked to the general problem of poverty and the perennial concern of social reformers of the nineteenth century - the link between social conditions and social unrest. [19] The legal and institutional response in England is paralleled by the administrative measures taken

at about the same time in France to "restore marriage to the working classes." [20]

Interestingly, among the better off, legal provision did little to re-inforce the assumption that the father would provide for his family. That the common law itself imposed no duty on a father to maintain his children is well known. [21] Furthermore, while a husband's legal duty to provide for his wife had been asserted from early times, the law did very little to provide the means of implementing this duty. It became enforceable only when the parties separated and even then, the mechanism used, which was to permit the husband to be sued by anyone granting credit to the wife, was dictated by the fact that the common law doctrine of unity of husband and wife deprived the wife of legal capacity to enter transactions in her own right. It was the doctrine of agency. Accordingly, if the parties separated by agreement and the husband expressly renounced his wife's right to pledge his credit, or if he made her an allowance, even one which was inadequate to support her and the children, he could not be made liable. [22] The husband could not, however, escape this liability if he left her or drove her out by his misconduct, unless the wife worked or had other income in which case she was expected to support herself from her own resources. [23] If the parties were wealthy enough to have access to the ecclesiastical courts, an order might be made for the support of an innocent wife. But one of the major motives for making such orders was to restore, to some degree, to the wife the benefits which she had brought to the marriage and which would otherwise accrue to the 'guilty' husband.

We may conclude that, while the strengthening of the poor law provisions during the first half of the nineteenth century indicated concern with respect to the working class over the operation of the assumption that the conjugal family should operate as an economic unit for the mutual benefit of all its members, the middle and upper class family was not seen as being under similar threat. [24] Divorce was not introduced until 1858, and in any case was not to become significantly widespread among these groups until the second half of the twentieth century. Nevertheless, we do detect the beginnings of concern, and the gradual introduction of normative law, towards the end of the nineteenth century. For, when in 1858 the English courts first acquired the power to dissolve marriages and to make financial provision for former spouses, they needed to find a rationale for making such provision. They found this partly in the earlier practice followed in the case of Parliamentary divorce, under which property might be transferred from the former husband to the former wife, partly to compensate her for property benefits her marriage had conferred on him and partly as a measure of consolation in recognition of the social deprivations which even ladies of high society would face if known to be divorced. [25] But such a rationale could not apply to the growing population of persons with more modest means (but seldom the poor) who resorted to divorce. Two additional reasons were found. One was that divorce should not throw a former wife, even if she were the guilty party, on to public funds or the streets. [26] This was somewhat remarkable, for neither the common law (under the doctrine of agency) nor the ecclesiastical courts had been prepared to have resort to the resources of the husband to keep a guilty

wife out of poverty. Nor, indeed, had the poor law itself, although this may have been because divorce (as opposed to separation) was beyond the reach of the poor and posed no threat to family stability . The other was that, if moral persuasion could not prevent divorce, monetary penalties might succeed. [27] Society might not yet need to "restore" marriage to the wealthier classes, but warning shots were already sounded.

Modern Developments

It is my contention that, as the twentieth century has progressed, the bulk of what is traditionally thought of as "family law" has lost is primarily regulatory character and had become a significant instrument in the transmission and dispersal of norms of social behaviour. On the other hand, the role of regulatory law has been shifted from the laws governing the property and power relations of the rich to social security law. I will try to substantiate these claims.

(a) The growth of "normative" law

One of the most striking features of the development of modern family law is the way in which the law has become less concerned with the regulation of dealings between family members over time in favour of contemporaneous relationships. This is immediately obvious in the law of intestate succession. We have observed how nineteenth century law refused to use the termination of a marriage as an opportunity to modify the linear transmission of property from ascendants to descendants. On intestacy, a widow had no rights to succeed to her husband's land, although a right of dower to a life interest in one-third of his freehold land remained, unless barred by the husband. [28] She would receive only one-third of his "movable" property

(wealth in forms other than land) if there were issue, but one half if there were not. If he made some alternative disposition by will, she was powerless to prevent such possible disinheritance. Now, however, a surviving spouse has become the favourite of the law. Glendon (1981) has pointed out how the states of the United States increased the rights of a surviving spouse on intestacy so that in the case of moderate estates he or she would take all or nearly all. The same is true in England where, presently, a spouse takes (besides all personal effects) whatever is left of the estate up to £15,000 (if there are children) or £40,000 (if there are no children, but other relatives) or all of it (if there are no children or relatives). [29] The right of a surviving spouse to upset a will was first introduced in the modern common law by the New Zealand Testator's Family Maintenance Act of 1900. The principle was adopted in Victoria in 1906 and soon spread to the other Australian states. British Columbia adopted the principle in 1920. [30] In 1939 New Zealand extended this right to the case of intestate succession. Always more cautious, England conferred this right on the surviving spouse in 1938 in the case of testacy and in 1952 to intestate succession. [31]

These gains by a surviving spouse at the expense of the deceased's kin (or beneficaries) was the first major indication that the law was beginning to look upon family living in a new way. The assets accumulated within a marriage were not primarily seen as belonging to the one partner or the other, to revert to their origin when the family broke up. They began to be thought of as somehow belonging to them both, and that it should be to the security provided by an asset build-up during the family that a spouse should look if the marriage

terminated by death. This is an ideology of family life. It may derive, it is true, from popular sentiment. [32] But in giving effect to the values, thereby diverting the course wealth would have taken even if willed otherwise by a married testator, the law conveyed them throughout the population. It took longer for this ideology to achieve complete legal recognition during the lifetimes of both of the spouses. To be sure, as long ago as 1895, New Zealand introduced a system of protecting the family home by its registration as a "joint family home", after which neither could dispose of it without the consent of the other. It was also protected against the creditors of either spouse, up to a certain value, though if attacked by creditors a court could order sale of the house and its protected value would usually revert to the husband. Only in 1974 would this value be shared equally. Nineteenth century "homestead" legislation in the western provinces of Canada and some of the United States gave some protection against creditors, but more because of the wish to stabilize the immigrant population by providing them with home-ownership safe from creditors so that they could make a contribution to the growing economies rather than to protect wives and promote values of family living. Only later was this linked to the policy of safeguarding the wife's occupation of the home. [33] In England, protection for a wife against inter vivos dealing by her husband with the matrimonial home had to wait until 1967. [34] These developments show that the law has been enlisted in stabilizing the assumption that the property owning spouse will during his lifetime use his property for the benefit of his family as a whole. This is what a parent, at least if he is married to his child's mother, ought to do. The law is

now prepared to enforce this behavioural expectation.

Laws protecting the matrimonial home leave untouched the question of the use of other assets. No doubt the expectation has grown that these, too, will be available for the benefit of the family as a whole. But it is rare for the law to enforce this expectation. Thus, in England, there is minimal protection for the family if one family member puts the assets at risk by the profligate running up of debts. [35] Some systems allow courts to make orders vesting the assets equally in each party on the happening of some event, short of divorce, such as separation or actions prejudicial to the family's economic interests. [36] In any case, such an order is likely to amount only to a holding operation until divorce. It is at that point where we can observe the strength of modern normative family law. For it is now becoming increasingly usual for legal systems not merely to permit courts to re-allocate the family assets between the partners on that event, but to direct them to do so according to a norm of equality. [37] The family is seen not merely as a unit within which the day-to-day economic support of its members is to be found, but as a unit within which the adult parties accumulate capital. The dominant economic partner (usually the man) is expected to use his power to acquire capital for the benefit of his whole family and not simply for himself, or his kin. If he does not, the law will do it for him. But in importing a norm of equality, we possibly encounter an interesting reversal of the more usual effects of normative law. For while such law frequently disperses the norms of the dominant segment of society among the rest here it is possible that the norm of equality derives from elsewhere. Surveys have frequently shown

support for the equality principle [38] but, as most of the people surveyed had modest assets, the principle would have limited impact on their economic relations. It may be significant that the principle originated in Scandinavian countries where income distribution is more even than it is in many other western countries. Whether the principle is so readily accepted by wealthy married individuals is less clear. Hence the difficulties encountered by some systems in applying the norm to that class of person, as shown by uncertainty as to the scope of assets which the principle would embrace. The inclusion of business capital, or its fruits, is a controversial matter. [39] Difficulty of a different kind has arisen over capital falling into the category of what has aptly been called "the new property". [40] An employee's interests under pension or life insurance schemes, for example, are frequently expected to endure also to the benefit of his family. How, then, should they be directed in the event of divorce? West Germany's Marriage Law Reform of 1976, introducing the versorgungsausgleich, requires half the pension rights accruing to only one party at the date of the divorce to be allocated to the other partner. Pension benefits are included in the definition of matrimonial property in New Zealand and are frequently divided on divorce in the United States and Australia. [41] Such provisions raise severe technical difficulties, especially in the administration of pension funds. But they follow from the ideology of partnership and the universalization of a concept of what family life should be like and what it should achieve.

As dramatic and significant as these examples of normative law are, they are exceeded by the development of legal and

other institutional measures as regards the personal dynamics of family life. In the nineteenth century, it is true, a well-off woman who had suffered cruelty might obtain legal dispensation from her obligation to cohabit through divorce a mensa et thoro in the ecclesiastical courts and, latterly, full divorce, but only if the cruelty was coupled with adultery. Even for her, the social and economic consequences of seeking such relief must have been a significant deterrent. But the poor woman had to endure her lot. It was not until 1875 that a beaten wife could obtain from a court an order absolving her of her obligation to live with her husband (so that she could withdraw from him with out losing her right, however flimsy, of support) [42] but even then she had to remain "faithful" to him. Things have now greatly changed. In England, for example, the Domestic Violence and Matrimonial Proceedings Act of 1976 permits courts to expel the other spouse (or cohabitee) even if he owns the property if the domestic circumstances warrant this. But legal regulation over the quality of life between adults is necessarily limited: for the adults can, and to a large extent do, set their own limits of tolerance to domestic turmoil. The law responds (with a greater or less degree of efficiency) to cries for help. But children, especially very young children, cannot call in the law. If the law is to intervene here at all, it must be on the basis of externally imposed standards of behaviour. We have reached the high point of normative law.

The law has long been concerned with children, in one way or another. In early times, its dominant concern was with the economic value children carried. The value of children, either as actual or potential collaborators in family production, or

agents for the transmission of family wealth, ensured legal concern, whether in the form of actions for compensation for the loss of a child's labour or within a wardship jurisdiction designed to safeguard and regulate the wealth which actually or potentially attached to them. We have observed earlier how regulatory law underwrote patriarchal rights to possess legitimate children. But children also attracted legal attention when they became a threat to economic or social stability. The children of the poor, or orphans, might themselves swell the ranks of paupers; they might spread social dislocation. Thus Tudor poor laws, culminating in the Elizabethan Act of 1601, empowered justices to remove such children from destitute or vagrant parents, or to assume jurisdiction over poor orphans and apprentice them or otherwise "set them to work." [43] The urgency felt in the early nineteenth century about the growth of urban juvenile delinquency resulted in the creation of legal powers to direct child beggars and vagrants to industrial schools and the eventual assimilation of these schools with reformatory schools under the dominating imperative that society should be protected from the threats posed by rootless children, whether they had committed criminal offences or not. [44] Family and social factors may well have been perceived as contributory causes to these ills, but the legislation was not primarily directed at improving the children's experience in those areas. Rather, it was concerned with attempting to devise means whereby society might best protect itself from their consequences.

In 1889, however, a very significant step was taken. Under section 1 of the Prevention of Cruelty to and Protection of Children Act of that year it became an offence if anyone over 16 who had custody, control or charge of a boy under 14 or a

girl under 16 wilfully ill-treated, neglected or abandoned the child in a manner likely to cause unnecessary suffering or injury to health. On conviction of the caregiver (usually the parent) the court could commit the child to the charge of a relative or anyone else willing to have the care of the child, and such person would have "like control over the child as if he were its parent .... and the child shall continue to be under the control of such person, notwithstanding that it is claimed by its parents." Concern is now decisively directed to the quality of the child's family life. The method of intervention, however, is one of punishment. Conviction of the caregiver is a condition precedent. The law is indeed concerned with the child's welfare, but the mode of entry is by an attack upon the caregiver's moral character. Behaviour is to be changed, but by coercion. The law is to bring about moral reform of delinquent parents. The punitive basis of such a stance is unstable and only imperfectly achieves the growing normative ideal of this area of law. For how can we properly treat inadequate people as criminals? Is the law to withdraw from its normative role unless extreme moral turpitude is present? In fact, the moral authoritarian basis for such intervention declined with the waning of Victorian Christian evangelicalism and began to be replaced by an overtly welfarist concern for the quality of the nation's stock. [45] If the quality of life of the community is adversely affected by bad parenting, intervention is justified without reference to moral turpitude. In 1952, in England, the requirement that the caregivers be prosecuted was removed as a condition precedent for intervening on behalf of children believed to be in need of care or protection.

In fact, as Donzelot (1980) has demonstrated, the liberal state had discovered a very effective means of transmitting its norms of family living to the general populace. The method of "philanthropy", whereby social and medical assistance was provided to families became the route for the conveyance of these norms. Families became the subject of continual monitoring, a process significantly helped by state education and the development of psychoanalytically-based social casework techniques. Donzelot sees its eventual outcome in a comprehensive system of state tutelage over families under which "the family ceases to exist as an autonomous agency. The tutelary administration of families consists in reducing their horizon to supervised reproduction and in the automatic selecting-out of socializable minors." [46] If we have reached that stage, we have surely achieved the maximization of the normative possibilities of law and administration. Family life is moulded to the image of the law and its agencies.

How far is this true? For many, broad-sweeping child protection statutes coupled with intrusive social work intervention has seriously compromised the scope of family autonomy.[47] Without doubt, modern legal and administrative machinery has the potential to impose patterns of family behaviour upon the community and displace parental judgment about how their children should be socialized. Much legal writing has been directed to trying to devise formulae for diminishing this potential. But how great really is the threat? Here it is useful to try to discover the ideological framework in which the administrators of this system work. A recent study of English practice has suggested that it operates on the following assumptions: first, that the upbringing of children is primarily

a parental, not state, responsibility; second, that parents naturally love their children and give priority to their welfare; third, that the presence of parental love will excuse a wide spectrum of behaviour which would, in the judgment of the supervising agency, otherwise adversely affect the child; fourth, that the presumption of parental love will only be defeated by strong evidence, usually of long-lasting behaviour patterns showing persistent refusal to advance the child's interests as opposed to those of the parent himself or herself; fifth, that, accordingly, parental explanations for the condition of children are prima facie accepted unless strong circumstantial evidence suggests the parent to be untrustworthy; and, finally, that the conviction that a parent does not put the child's interests first will justify coercive intervention in the family. [48] Thus, apart from very extreme cases, intervention is still premised on a moral judgment about parental behaviour. Welfarism, which concerns itself primarily with the condition of the children and social expectations about what this should be like, has thus reached a compromise with the claims of adult liberty and family autonomy. Adults may bring up their children within a wide measure of freedom. But they must be committed to the principle of advancing their children's interests, and if they act palpably contrary to this principle they may justifiably forfeit their ascribed role as socializers. We can truly conclude, therefore, that the role of child caregiving is delegated by the community to parents and is accordingly subject to potential scrutiny by the community and, ultimately, reversion to the community if the parent fails. The norm of promotion of the child's interests is entrusted to parents, subject to a right of revocation.

These modern developments surely indicate an exceptional degree of community involvement, through legal and other social institutions, in the quality of family living. How can one account for it? The answer, it is suggested, lies in the growth of democratic values and institutions. The democratic ideal embraces the whole of the community. Everyone is held entitled to participate in the community's wealth. Political and legal language talks of people's "rights". The technological revolution of the twentieth century seemed to bring the satisfaction of those rights within potential realisation. But when the forces at work within some families threaten to deprive some people of those potential benefits, whether by distributing the economic fruits unequally between the adult members or by damaging the natural emotional or physical endowments of the children by irresponsible exercise of parental power, the community is impelled to intervene. So we begin to conceive of the "rights" of the homemaker; the "rights" of children. The irony is that these democratic forces have led to what some have detected as anti-democratic restrictions of adult liberty, especially in family living. [49] Certainly there is a conflict of values here. But they should not, it is suggested, be presented as a conflict between good and evil but as competing conceptions of the good. If either excludes the other, an important value is lost. There may be some optimal point where the two, in combination, achieve a result which best captures the aspirations of a democratic community. But the point is an elusive one and the line of compromise between the values likely to be subject to constant change.

(b) Regulatory law

The growth of democracy also accounts for the second major change of the law applicable to family living. For regulatory law no longer primarily concerns itself with the mechanisms of transmitting wealth and status among a dominant social group. Instead, it has become concerned with the allocation of resources within the community as a whole. The law of tax and social security is the twentieth century equivalent to the regulatory laws of previous centuries - the laws of succession, strict settlements and the ascendancy of the husband's rights. However, just as earlier regulatory law underwrote the economic and social system of former days, so present social security law is premised on economic and social assumptions about the organisation of modern societies. It is not essentially normative, although its character often gives it the appearance of seeking to re-inforce behaviour patterns.

Tax law may, therefore, not only distribute resources from the rich to the poor, but also set up marginal benefits to particular population groups. Allowances in favour of married people may be represented as supporting family living and (in general) directing resources towards social groups concerned with the upbringing of children, but the British practice of aggregating the earned income of spouses and permitting the man (not the woman) to deduct a sum by way of tax allowance seems to be premised on the assumption of social organisation (which may frequently, but by no means universally, be true) that on marriage itself the man suffers a financial liability towards his wife and, furthermore, that state support is warranted to help him meeting it. Many social security

benefits can be supplemented by reference to the number of "dependents" in the beneficiary's family. The expectation clearly is that the payments will accrue to their ultimate benefit. But the system usually supposes that an individual's earned income will also be so applied. Hence an adult woman, in receipt of supplementary benefit in England, will lose this entitlement on cohabiting with a man who is working full-time. The practice may be criticised on the basis that it assumes and therefore perpetuates, the economic dependence of women. [50] On the other hand, if the assumption that cohabitation carries with it de facto distribution of the earnings of the man between the couple is usually correct, the basis for continuing supplementary benefit payments collapses. A similar problem arises in relation to the non-contributory invalid care allowance. This benefit assumes that the beneficiary has given up full-time employment in order to care for an invalid relative: yet it is not payable to married women or female cohabitees. This assumption of the division of labour within the family may be questioned, but if it were not made, a married woman who gave up work in order to care for the relative would be better off than a married woman who had not been in such employment and cared for the relative in any case. The only solution would be to make the benefit payable to all married men or women who cared for an infirm relative, whether or not they had abandoned work to do this. This would alter the rationale of the benefit (compensation for lost earnings) and amount to a state subsidy for a specific family function. Like benefits for children, it would simply move further community resources into the family on its assumption of particular tasks (child care/invalid care) which would otherwise fall on the community. The law

would simply implement a policy decision already taken.

The case of the invalidity pension is more difficult. This British social security benefit is payable to a wife who suffers disability, but only if she can show that, in addition to incapacity to enter paid employment, she is "incapable of performing normal household duties," a qualification not found in the case of a male beneficiary. If this assumption about division of household labour were not made, a woman who was unable to earn but who could do housework would be better off than the many women who confine their activities to home care. To make a benefit payable to all home carers (a state "housekeeping wage") is a possible option, but one with considerable implications for public expenditure and general social security policy. If the qualification was added for men also, the result would be that the benefit would not be payable if the male breadwinner became incapable of work if he could perform household tasks (no matter how ill-trained for them), the assumption being that his wife earns the family income. But since female earnings are generally much lower than male, such families would be less well off in comparison to those where the wife had become incapacitated and the husband continued to earn. [51] These cases illustrate how regulatory law is essentially the servant of prevalent social organisation. To use it, for ideological reasons, to change such organisation can lead to grave problems of equity. For regulatory law takes social organisation as it finds it. If society is to be changed, this should be through other agencies, other processes.

The future

We have observed how our social organisation ascribes the role of child care primarily to families. It does this not only

because this is perceived as being beneficial for the children, but also because it imposes the least strain on our economic system. Comprehensive state child care would be massively expensive. Normative family law has intervened insofar as this has been considered necessary to safeguard the interests of the primary caregiver (the woman) and the primary beneficiaries (the children). Regulatory law has, to greater or lesser extent, moved resources into families with children. However, the community has yet to come to terms with the major challenge posed by a family-based child care system. For the growing recognition of individual adult interests, impelled by democratic principles, has made almost universally available the option for either of the parents to leave the family and, by divorce, to enter into a new, legally recognised, unit. Family child care is unstable child care. The consequences of this on children are as yet little known. I will not speculate on any possible long-term psychological effects. These cannot, in any case, be fully known until the present generation of children affected by divorce reach adulthood. Nor, indeed, can we be certain what economic effects the experience of family divorce will have for children. However, we do have overwhelming evidence that, in the short term at any rate, the families of children broken by divorce suffer severe economic adversity which is only significantly likely to be relieved by the re-marriage of the lone parent. The reason for this is that the lone parent is normally the mother, and women's earnings are significantly lower than those of men. [52] Thus that segment of the former family unit (mother and children) which had the highest calls on that family's income will now have available to it only the income of the partner with the weaker earning capacity.

One possible strategy for providing for the casualties of the family-based child care system is for the community to bear the whole cost. After all, it can be argued, the community saves by casting the primary burden of child care on families. While some western societies have been relatively generous in this respect, others have not. The most spectacular failure of this approach was probably the rejection in the United Kingdom of the proposals of the Committee on One-Parent Families (the Finer Committee) (1974) for a "guaranteed maintenance allowance" which would bring all one-parent families up the level of average male earnings. What are the remaining options? One is to have recourse to the resources of the former partner. If he has not formed a household comprising a new set of children, it is probable that his resources, if re-directed to his former family, could provide a significant improvement of their living standards. [53] But this encounters two main problems. First, this process runs into conflict with the apparent assertion of individual freedom embodied in the right to divorce. Such men, and their new partners, are said frequently to resent such payments and many difficulties are indeed encountered with regard to enforcement. So, one tactic recently adopted in the United States, is to improve significantly the enforcement procedures against such men. [54] But the second problem is that, when these men do form new families, there are rarely sufficient resources from which they can support both sets of children. The problem of child support inevitably becomes enmeshed with the general poverty programme of the state.

A second option is to fall back on the earning capacity of the caregiving adult. This relieves the state and the other

former partner. This principle of self-sufficiency has been vigorously pursued in the United States and is taking hold in Canada.[55] It was introduced, but with significant qualifications, in Australia in 1975 and is the fundamental orientation of New Zealand reforms in 1980. In these movements, we can observe a further instance of normative law at work. Support for a former spouse is not to be ordered, under this principle, unless she (usually it will be the woman) has done all that is reasonable to become self-sufficient. This might include not merely seeking employment, but, as in a recent English Parliamentary Bill, taking steps to increase her capacity to earn.[56] The effect of such provisions will be felt during marriage as well as after divorce. For a prudent woman will try to take care that she does not allow her household or child caregiving activities to interfere too drastically in her ability to earn, for she may be required to fall back on this should the marriage fail. Women are not to use marriage and homemaking as an escape from economic activity. Child-caregiving should not exclude labour-force participation.

Are either of these two strategies likely to solve the problem of the instability of family-based child care? It is unlikely. Resort to the resources of the former breadwinner is likely to be effective only in the short term. Its effectiveness virtually disappears on his remarriage. The expectation that the former wife should mobilise her own earning power runs up against the rock of economic and social reality. Many women with children will be unable to reconcile child caregiving with full time employment, even when the children are of school age. Part-time work has been shown to be a totally inadequate means to lift these families much above poverty levels.[57]

The expectation collapses utterly in times of high unemployment. So long as economic policy resists substantial movement of community resources towards the casualties of broken marriages, normative law might do better to re-focus its attention away from behaviour within the family and look towards the role of men and women in employment. If employment law and practice were to transmit the expectation that either parent should be equally committed to the inescapable responsibilities of child-care so that, for example, leave periods or flexible rostering would permit men and women to perform those tasks, the economic value of both the sexes in employment would be equalised. Rather than impelling female child-caregivers into the labour market, male potential caregivers might be thrust back into the home. Only if this can be achieved will the major problems of reconciling family based child care with our present economic and political ideologies be within sight.

NOTES

1. "The Democratization of Family Law", Paper presented to The British Society for Population Studies, Bath, September 1983.

2. This concept draws primarily on the theory of law advanced by H.L.A. Hart, (1961), but can be found in the roles ascribed to law by the American jurists, Roscoe Pound (1959) and Karl Llewellyn (1962).

3. See especially John Austin, (1832) and Karl Olivercrona, (1939) (1971).

4. Max Rheinstein and Rene Konig in A.G. Chloros (ed.) International Encyclopedia of Comparative Law, Vol. IV, The Family, ch. 1 (Introduction) (J.C.B. Mohr, (Paul Siebeck) Tubingen) (n.d.), p. 12.

5. See O. Kahn-Freund (1955) p. 274; A.V. Dicey, (1905) p. 346.

6. John Eekelaar and Mavis Maclean, (forthcoming).

7. R. v. de Manneville (1804) 5 East 221; de Manneville v. de Manneville (1804) 10 Ves. 52; see also R. v. Greenhill (1836) 4 A. & E. 624 (three girls of 5, 4 and 2 removed from mother to father). A concession towards the child's interest was made by the Custody of Infants Act 1839 which allowed courts to permit children under seven to stay with their mother and to order husbands to permit innocent mothers to visit children over that age in his possession.

8. Ball v. Ball (1827) 2 Sim. 35.

9. Shelley v. Westbrooke (1821) Jac. 266; Thomas v. Roberts (1850) 3 De G. & Sm. 758 ("I apprehend that, in England, a man who holds the opinion, that prayer ... is no part of duty, but is superfluous; who considers, moreover, that there is not any day of the week which ought to be observed as a Sabbath ... must be deemed to entertain opinions noxious to society, adverse to civilization ... such opinions must disqualify him for the guardianship of an English child, whether his own son or any other"); in re Besant (1879) 11 Ch. D. 568.

10. These developments were consolidated in the Poor Relief Act 1601.

11. The Poor Relief (Descrted Wives and Children) Act 1718.

12. Poor Relief Act 1834, ss. 56, 57.

13. See generally Sidney and Beatrice Webb (1910).

14. See O.R. McGregor and M. Finer, 'The History of the Obligation to Maintain' in the Report of the Committee on One-Parent Families (1974) Cmnd. 5629, vol. II, pp. 114-21.

15. This was a potent argument against the attempt to eliminate illegitimacy by casting the sole burden on the mother: McGregor & Finer, loc. cit. pp. 118-9.

16. M. Anderson (1971).

17. M. Anderson (1979) p. 51.

18. A.P. Donajgrodzki (1977) p. 61.

19. See generally A.P. Donajgrodzki (ed) (1977); John Eekelaar, R.W. Dingwall and Topsy Murray (1982).

20. Discussed by J. Donzelot (1980).

21. See Blackstone, Commentaries on the Laws of England (1765) 1.16.1.

22. See Eastland v. Burchell (1878) 3 Q.B.D. 432.

23. Warr v. Huntly (1703) 1 Salk. 118; Bird v. Jones (1828) 3 Man. & Ry. 121; Dixon v. Hurrell (1838) 8 C. & P. 717.

24. Blackstone, Commentaries 1.16.1. notes that the only exceptions to the non-justiciability of the parental obligation to maintain children (apart from the poor law) were exceptional measures whereby Roman Catholics and Jews might be compelled to support their children who had

24. (Cont'd)

renounced their religion and who might for that reason have been denied support.

25. See Robertson v. Robertson (1883) 8 P. & D. 94, per Sir George Jessel M.R.

26. See Ashcroft v. Ashcroft [1902] P. 270; Squires v. Squires [1905] P. 4.

27. Sidney v. Sidney (1865) 4 Sw. & Tr. 178.

28. Dower Act 1833.

29. Family Provision (Intestate Succession) Order 1972.

30. See Joseph Laufer (1955).

31. Inheritance (Family Provision) Act 1938; Intestates' Estates Act 1952: See now, Inheritance (Provision for Family and Dependants) Act 1975.

32. See Glendon's account of the surveys showing evidence of popular support for the claims of the surviving spouse: Glendon, (1981) pp. 25-7.

33. John Eekelaar (1978) pp. 240-1.

34. Matrimonial Homes Act 1967. This Act has generally been regarded as giving unsatisfactory protection, and the decision of the House of Lords in Williams and Glyns Bank v. Boland [1981] A.C. 487 extends the protection to some degree.

35. See John Eekelaar, (1984) p. 136.

36. A full examination of different systems was made by the Ontario Law Reform Commission, Study Prepared by the Family Law Project, Property Subjects, vol. 2 (Toronto 1967) See also the English Law Commission, Published Working Paper No. 42, Family Property Law (1971), Part 5.

37. England and Australia are the only two major common law jurisdictions which have not incorporated a norm of equality. Most Canadian provinces did this during the 1970s and New Zealand adopted it in 1980. See John Eekelaar (1984) p. 105.

38. See John Eekelaar (1984) p. 105.

39. An interesting jurisdiction in which to find such difficulties is Ontario: see A. Bissett-Johnson and W. Holland, Matrimonial Property Law in Canada.

40. Glendon, (1981).

41. John Eekelaar, op.cit. (1984) p. 119.

42. Matrimonial Causes Act 1878.

43. R.W. Dingwall, J. Eekelaar and T. Murray, (1983b).

44. See John Eekelaar, Robert Dingwall and Topsy Murray (1982).

45. See Eekelaar, Dingwall and Murray, (1982).

46. Donzelot (1980) p. 168.

47. An outstanding plea for family autonomy is found in J. Goldstein, A. Freud and A.J. Solnit (1979). See also, Ferdinand Mount (1982).

48. R. Dingwall, John Eekelaar and Topsy Murray (1983).

49. See especially Lasch (1977); Mount (1982).

50. See D. Pearl (1980).

51. See Eekelaar (1984) pp. 203-4.

52. Maclean and Eekelaar (1983).

53. Maclean and Eekelaar (1983).

54. See Krause (1981).

55. Eekelaar and Maclean (forthcoming).

56. Matrimonial and Family Proceedings Bill 1983, cl. 3.

57. Maclean and Eekelaar (1983).

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List of abbreviations

ACOSS	The Australian Council of Social Service
ACTU	The Australian Council of Trade Unions
DSR	Dependent Spouse Rebate
FIS	Family Income Supplement
IFS	Institute of Family Studies
SPB	Supporting Parents Benefit
UB	Unemployment Benefit

Throwing out the baby . . . the need to examine the unintended effects of tax transfer proposals

by ANDREW BURBIDGE and FRANK MAAS

SOCIAL CHANGE AND TAX TRANSFER POLICIES

Changes occurring in society generally and in families particularly have generated debates about change in most areas of social policy but none so vigorous and wide ranging as those relating to taxation and income security policies. Three examples of such social and family changes should suffice to demonstrate the impact on income transfer policies.

With divorce and separation rates increasing steadily, the number of single parent families in Australia has grown by 145 per cent between 1966 and 1981 for those families headed by females and 62 per cent for those headed by males (Institute of Family Studies, 1983:10). These families comprised 16.2 per cent of all families with children in 1982 (Institute of Family Studies, 1983:9) and one of their major concerns focuses on their general difficulty in gaining access to adequate incomes (Council for the Single Mother and Her Child, 1984). At July 1982 only about 35 per cent of females heading single parent families with dependent children were employed (ABS, Labour Force Status and other Characteristics of Families, 1982) and the number of females receiving the Supporting Parents' Benefit (SPB) increased from 26,286 when it was instituted in 1974, to 132,358 at June 1983 (Department of Social Security, 1983: 106), an increase of almost 20 per cent per year.

As a result of employment difficulties, low rates of income support payments to sole parents and low effective levels of maintenance payments from spouses (Attorney-General's Department, 1984:31-33) the incidence of poverty among one-parent families is high. The Institute of Family Studies has estimated that between 47 per cent and 60 per cent of one-parent families had incomes in 1981-82 less than the Melbourne University Poverty Line (Institute of Family Studies, 1984).

As a result of this concern numerous aspects of the tax and social security system have attracted attention and proposals for

reform. These include the suggestions that the level of the benefit be raised, that rates of withdrawal be eased to encourage greater private earnings, that payments for children be increased, and that eligibility tests be eased or strengthened depending on the value structure of the proposer.

A second example of social change which raises issues for income transfer policies is the increase, over the last three decades of the numbers of married women, especially those with dependent children, participating in the labour force. This change has generated numerous proposals for alterations to tax and social security provisions. Proposals focus on the levels of income support available to families with children, the existence and level of taxation relief attracted by dependent spouses and the rates of tax applying to different categories of employment, the suggestion having been made that married women should pay lower tax rates or no tax at all compared with men or single women working in the same jobs (Apps, Jones and Savage, 1981).

A third phenomenon causing considerable concern is the widening gap between high and low income groups in Australia. Research indicates that the top one per cent of adult individuals hold 25 per cent of private wealth (Piggot, 1984:23) and the proportion of income received by the top 10 per cent of males has increased from 19.2 per cent in 1973-74 to 25 per cent in 1981-82. Over the same period the proportion of total income received by the bottom 20 per cent has declined from 4.9 per cent to 3.6 per cent (ABS, Income Distribution Australia: Individuals, 1973-74, 1981-82).

The high levels of unemployment experienced over the last decade have obviously contributed to this situation and many families find themselves without adequate income to meet their needs. At May 1983 over 250,000 families with dependent children were supported by either unemployment benefits or supporting parents' benefits (Department of Social Security, 1983). Children in those families comprise more than 80 per cent of all children in

social security familes (Cox, 1984:12).

Policy proposals aimed at redistributing incomes to reduce these levels of inequality include the raising of the levels of pensions and benefits, easing means tests to encourage greater work effort, increasing universally paid family allowances, reducing the levels of tax paid by low income families and the introduction of income support schemes more clearly focussed on low income groups.

Objectives of Proposed Changes

The objectives being explicitly or implicitly pursued in the many proposals to change the Australian tax transfer system mainly focus on vertical and horizontal equity considerations and on the effects of income transfer arrangements on work incentives. This paper will examine some proposed modifications to firstly identify the basis of the changes they hope to bring about, and to asses the extent to which these objectives are likely to be achieved if the proposed changes were implemented. Secondly, the paper will identify other outcomes, either implicit or unintended, which might be contrary to the primary objectives of the proposals.

Currently, proposals for change to the tax and social security systems fall into two groups. The first group of suggestions propose far reaching and comprehensive overhauls to the present arrangements. Based on the premise that the tax system has become too narrowly based on personal income earned by PAYE employees, suggestions have been made to increase and widen the basis of indirect taxes, to introduce taxes on net worth and to integrate the taxation and social security systems (Taxation Review Committee, 1975: Mathews, 1980, 1984).

Other advocates of change regard wholesale reforms as too difficult to achieve and instead concentrate on adjusting the current system to achieve their various goals. As this latter

group appears to have had greater success in recent years it is on their proposals that this paper focuses.

Vertical equity

Within this group the following goals are identifiable. Two basic approaches to assisting low income groups exist. One approach emphasises the need to concentrate assistance on those clearly in need and favours programs that exclude higher income groups. Various forms of testing eligibility, usually based on the level of private or earned incomes are normally an integral part of proposals from this source.

Opposing this approach are those who argue that highly targeted schemes are stigmatising and that they reduce work incentives because of the high withdrawal rates of assistance. These advocates favour payments of a universal nature based on some basis identifiable as a cause of hardship or a barrier to employment such as the presence of children or age. Some within this group also suggest taxing back a proportion of such grants in order to reduce the amount of assistance flowing to high income groups.

The problems of the universal approach, according to its critics, are that the large sums usually involved only allow for minimal levels of assistance. For example, a report by the Priorities Review Staff (1975:24) claims:

> "Every country which has removed the means test on the age pension, or its equivalent, has been forced to introduce some form of extra means-tested benefit to assist those with little or no other income."

In addition critics point out that with universal payments schemes significant proportions of scarce resources flow to high income recipients.

Nevertheless, the universalists at present include many major organisations. Advocates of increased family allowances, for example, include the peak welfare organisation in Australia, the Australian Council of Social Service (ACOSS), the peak trade union organisation, the Australian Council of Trade Unions (ACTU), the National Council of Women and the Women's Action Alliance.

ACOSS argues that such a change will assist low income families with children. Some advocates for the poor also include means-tested schemes as part of a package of changes. For example in its 1984-85 pre-budget submission the Brotherhood of St. Laurence calls for increases in the rates of several income tested payments - children's allowance, guardian's allowance, the single rate of unemployment benefits and pensions and rent assistance. In addition they propose increases in the rates of family allowance.

This example of a package of proposals indicates that several objectives will often be sought at the same time and that different schemes will put their major emphasis on different goals. Proponents of reform must therefore undertake trade-offs between competing objectives and the outcomes of these compromises will reflect the balance of the fundamental values espoused by different advocates.

Horizontal equity

The above examples focused on the objective of reducing vertical inequity, that of redistributing income from high to low income groups. Many proposals focus on the need to provide for horizontal equity, the principle that taxpayers in similar circumstances should be treated similarly. Taxpayers should be compensated for the existence of dependents by tax deductions or rebates, by payments on the basis of their presence or by provision of subsidised services. The main provisions currently available are the payment of tax rebates for a sole parent, a

dependent spouse and a dependent spouse plus dependent children, and a universal payment for the presence of children, the family allowance.

Many advocates propose the increase of family allowance to compensate for the costs of raising children, especially as the value of this payment has fallen over recent times due to non-indexation (Department of Social Security, 1984). It is over the level and even the existence of the Dependent Spouse Rebate (DSR) however, that much debate rages today. Conservative groups, especially those seeking a strengthening of the position of families with women not working in the paid labour force, advocate the continuance and raising of the DSR as both recognition of the value of domestic work and as compensation for the dependent status of these women, two claims that are not unambiguously consistent.

Feminist critics argue that the presence of an adult in the home, providing in-kind services to the household, does not equate with the dependent status of a child and therefore no horizontal equity case exists. In addition they argue, on grounds of vertical equity that a high proportion of the tax expenditures involved go to high income households and, on the issue of economic efficiency, that the presence of such a means-tested rebate discourages women from seeking paid employment.

Efficiency

Work incentives and disincentives, or the efficiency aspects of taxation policies, are the other main concern of advocates of change. It is argued that the level of effective marginal tax rates affect the incentive people have to seek paid work. If these rates are set too high, it is asserted that people particularly women with children will prefer to spend their time on non-paid activity rather than work. In addition to the marginal rate of income tax faced by each taxpayer with income above the tax threshold, withdrawal of social security,

education, health and child care concessions add to the effective marginal tax rate. The basic tax rate in Australia is 30 per cent but the withdrawal rate of different concessions varies from 12.5 per cent in the case of the Pensioner Rebate to 100 per cent in the case of the Unemployment Benefits (UB). The family of a married woman going out to work can be faced with an effective marginal tax rate of up to 155 per cent if her husband is unemployed. A woman receiving the Supporting Parents' Benefit (SPB) is faced with an 80 per cent effective marginal tax rate as her benefit is withdrawn, and up to 100 per cent when taxable income reaches the Medicare levy threshold.

Advocates from feminist groups and some from anti-poverty organisations base their claims that means-tested schemes reduce incentives to work on such examples and consequently propose assistance that is paid without an income test especially in the case of the presence of children. As an alternative, many argue for at least the easing of the taper rates on various benefits such as SPB or UB and the lifting of the amount which beneficiaries can earn before their benefit is affected (Council for the Single Mother and Her Child, 1984).

At the other end of the income scales, tax reformers representing professional or business groups also argue that the highest marginal rate, 60 per cent, is too high in that it reduces incentives to work longer hours and encourages tax avoidence.

Simplicity

The objective of simplicity is usually added to those of equity and efficiency for tax arrangements as a goal that should be a characteristic of any worthwhile system.

It is argued that the simpler a system is to both understand and administer the more efficient it is in terms of both compliance costs and administration costs.

PROPOSED TAX CHANGES

The proposals examined in the next section of the paper are analysed according to the extent they are likely to achieve those of the above objectives they either explicitly or implicitly embody and are examined for any unintended or hidden outcomes they may also produce.

A Fifteen Per Cent Standard Tax Rate

The first proposal to be discussed has been put forward as part of a package of tax and social security reforms by ACOSS. The suggestion is that the standard rate of tax be reduced from the current 30 cents in the dollar to 15 per cent marginal tax rate for those on reduced pensions (Australian Council of Social Service, 1984:8). The proposal aims to avoid the situation where people with very little income other than a pension or benefit are nevertheless required to pay income tax.

Significant work disincentives

Examination of the proposal confirms that such a change would benefit those on part benefits or pensions but only as long as they stay eligible for government transfers. To this extent it would achieve an increase in the financial well-being of this group and therefore be a more equitable outcome. However, the unintended or unforeseen effect it would have is to further discourage people in such situations from increasing their work participation and earning their way out of poverty.

The following example demonstrates the disincentive effect of the proposed reduction in marginal tax rates for pensioners and beneficiaries. Consider the case of a female single parent with two dependent children, earning $A200 per week from a part-time job. Her disposable income per week under current tax and social security arrangements is $A233.56 per week after paying tax of $A21.61 per week. If the proposed tax rate was applied at the

rate of 15 per cent, her disposable income would increase to $A251.86 per week after paying only $A3.31 tax.

However, if the sole parent were able to increase her earnings to $A300 per week she would face the prospect of no longer being eligible for the Supporting Parents' Benefit and would thus face the higher marginal tax rate of 30 per cent. Her disposable income would then be $A264.27 per week, a net increase of $A12.41 per week for the extra $A100 earned. Such a person would therefore be faced with an effective marginal tax rate of 80 per cent in this case. Such high marginal tax rates are well above those faced by the highest income earners, currently 60 per cent and must act as a disincentive to seek higher private income.

Poverty trap

A far more serious outcome of the proposal is that it creates a poverty trap. Around the point the beneficiary ceases to be eligible for the benefit, at $A284.80 per week, the combined effect of receiving no transfer from the government and shifting from a marginal tax rate of 15 per cent to one of 30 per cent results in an actual loss of disposable income. When her total income is equal to $A284.40, the single parent with two children is liable to pay tax of $A14.47 per week under the suggested proposal, leaving her with a disposable income of $A270.33 per week. When she earns $A285 per week, an increase of 60 cents, her tax liability jumps to $A43.99 per week and her disposable income falls to $A241.01 per week. By earning an extra 60 cents per week, or $A31.20 per year, this supporting parent would be $A29.32 per week, or $A1,524.64 per year, worse off.

Such a result would not occur if the proposed lower tax rate of 15 per cent was applied to all wage earners and not just those on pensions or benefits. The ACOSS suggestion is unclear on this and could be interpreted in this way. If all taxpayers were to be taxed at the rate of 15 per cent for the income range $A4,595-$19,500, the current standard tax rate range, most

benefits from the change would flow to middle and high income earners and not to low income recipients. As Table 1 shows, the maximum effect is experienced by taxpayers earning $A19,500 p.a., generally regarded as being in the middle income range. A single taxpayer earning this income would receive the maximum tax cut in dollar terms, $A42.99 per week, the maximum percentage tax cut of 50 per cent and the maximum increase in disposable income, 14.9 per cent.

- TABLE 1 IN HERE -

By contrast a low income earner at $A10,000 per annum, while also experiencing a 50 per cent tax cut, would receive a tax cut in dollar terms of only $A15.59 per week and an actual increase in disposable income of only 9.7 per cent. In addition, the maximum tax cut in dollar terms flows not only to middle income earners, but all the way up the range to the very highest levels while those at the bottom of the income distribution scale receive far less than the $A42.99 per week reduction. Consequently it can be seen that a proposal aimed at reducing the disparities of income between high and low earners may bring about the opposite outcome. Greater vertical inequity appears to be the most likely result of the proposal under examination, the reduction of the standard rate of tax.

Loss of revenue

This result would possibly be exacerbated by the loss of government revenues occurring as the amount of tax revenue would be dramatically reduced. Table 2 shows that over 9.3 billion dollars otherwise collected would be lost to the tax transfer system.

- TABLE 2 IN HERE -

Only 35.5 per cent of those tax savings would flow to income recipients earning less than average weekly earnings, even though they receive the greatest percentage reductions in tax payable. Consequently 64.5 per cent of the savings to taxpayers would go to other than low income earners. A total of 6 billion dollars would be saved by middle and high income earners and therefore not be available to provide for essential services utilized by low income families. Housing, education, health and child care and employment programs could be among the areas to suffer due to such an extensive revenue loss, thereby placing poor families further behind those who can afford to purchase services on the private market.

Tapered Tax Rebate

The second proposal to be examined attempts to direct assistance to low income families with less overall revenue loss than occurs with measures which have across-the-board effects. The proposal involves the granting of a tax rebate to low income earners which is payabale in full up to a certain income level and then withdrawn at a specific rate until no rebate is left. Such a proposal is reported at the time of writing to be part of the discussions being held between the government and the ACTU. Such a tapered rebate was introduced into the Australian tax transfer system for the 1982-83 financial year. A rebate of $A250 was made available only to pensioners and supporting parents. The rebate is paid to those with incomes below $A7,429 and withdrawn or tapered away at the rate of 12.5 cents for every dollar earned over that amount.

The tapered rebate assessed here would extend and replace the above pensioner rebate by:

- increasing the maximum value of the rebate to $A312 ($A6 per week);

- making all low income taxpayers eligible;
- extending the means test to begin at $A13,260
- withdrawing the rebate at the rate of 5 per cent. This would eliminate the rebate at income of $A19,500 p.a.

Greater vertical equity

Table 3 shows how such a change would effect some selected low income family types in terms of improving their disposable incomes and altering the work disincentives they would face.

- TABLE 3 IN HERE -

As shown in Table 3 low income families with children would be better off in terms of receiving higher disposable incomes as a result of the change. This would occur in two ways. Firstly, those families currently eligible for the pensioner rebate would be better off as the proposed rebate for a larger amount begins to be means tested at a higher income and tapers at a gentler rate. Consequently, supporting parents with two children would retain more of their private income when earnings were over $A58 per week right through the income range up to $A375 per week, the point at which the tapered rebate disappears altogether. The maximum increase in disposable income of $A6 per week is experienced up to about $A255, the point at which the rebate begins to taper away.

The second way in which vertical equity is enhanced is by the broadening of the concession to include more low income families than are at present eligible for the pensioner rebate. Under the proposed change those families either on unemployment benefits or earning meagre incomes would be included.

For example, those receiving unemployment benefits would

experience a reduction in their tax over the range of private earnings from $A5.30 per week to $A375 per week for a couple with children. The tax rebate raises the effective tax threshold for such a family from $A5.30 per week to $A30.60 per week of private earnings. A couple with no children receiving UB are presently liable to pay tax even with no extra income. The tax threshold for such a family type is $A141.57 per week and their benefit payment is $A149.10 per week. The effect of the proposed tapered rebate would be to increase their effective tax threshold to $A161.57 per week. In addition there would be less loss of revenue to higher income groups than occurred with the proposal for a reduction in the standard rate of tax.

The effect on work incentives

When the impact on work disincentives is considered the outcome is not so clear-cut. Depending on the family type and their circumstances there is a range of income for which their effective marginal tax rate is less than under current arrangments and then another range at a higher level for which the work disincentives they face are higher than at present.

As Table 3 shows, currently a supporting parent faces a 50 per cent marginal tax rate once her private income reaches $A42 per week as her benefit is withdrawn at the rate of 50 cents in the dollar. She then experiences an increase to 65 per cent as she reaches the tax threshold at $A58 per week. Under the proposed tapered rebate the supporting parent does not face the higher marginal tax rate until her private income reaches the new tax threshold at $A98 per week. Consequently, there is an incentive for her to seek part-time work to earn at least another $A40 per week. This reduction in the effective marginal tax rate occurs because of the change from the higher taper rate of 12.5 per cent for the current pensioner rebate to the rate of 5 per cent for the proposed tapered rebate.

The effective marginal tax rate is higher, however, than for the

current arrangement, over the income range $A255 per week to $A375 per week. This occurs because of the broader income range that the tapered rebate extends over. As Table 3 shows, at the level of $A300 per week private earnings, a supporting parent would face an effective marginal tax rate of 31 per cent under existing conditions and 36 per cent with the proposed tapered rebate. Consequently, a slightly increased work disincentive effect could be applicable over the higher income range. However, when it is considered that under current arrangements she would still experience effective marginal tax rates ranging between 50 and 100 per cent it is probably more beneficial to have a greater disposable income from $A58 per week to $A375 per week as would be the case with the tapered rebate.

For a family receiving unemployment benefits and, at higher levels of earned income, the family income supplement(FIS), the changes in effective marginal tax rates are similar to those applicable to the one parent family. As Table 3 shows, under current arrangments once $A5.30 per week private income is attained, tax becomes payable at the standard rate of 30 per cent, then increases to 65 per cent at $A20 per week as unemployment benefits are withdrawn at 50 cents for every dollar earned. Under the tapered rebate proposal, because the tax threshold is increased to $A30.60 per week of earned income, the unemployed family does not have their disposable income reduced until weekly earnings of $A20 are reached when their benefit is withdrawn at the rate of 50 per cent and the move onto the marginal tax rate of 65 per cent is delayed until $A30.60 per week is earned. Consequently, an unemployed person or their spouse would have some increased incentive to seek at least part-time work under the tapered rebate proposal.

As with the supporting parent example, however, the couple with children will face a slightly higher marginal tax rate than under current arrangements, once the tapered rebate begins to be withdrawn at $A255 per week. As Table 3 shows, at $A260 per week a couple on a low income experience an effective marginal tax

rate of 81 per cent under current conditions, which comprises the 30 per cent standard tax rate, 50 per cent withdrawal rate of FIS and the one per cent Medicare levy. With the proposed tapered rebate such a family would incur a further 5 per cent marginal tax rate as the taper applies over the range $A255-375 per week.

Nevertheless, as with the case of the one-parent family, the vertical equity benefits of an increased disposable income over a wide range of earnings is probably worth the disadvantage of marginally increased work disincentives toward the middle income level, especially when such families already face very high effective marginal tax rates at lower levels of earnings under current arrangments.

In the case of the unemployed family under discussion they face a marginal tax rate of at least 100 per cent over the range $A70-210 per week of earned income (or $A70-180 if they transfer from UB to FIS when it becomes worth more than UB) because of the $1 for $1 withdrawal rate on UB. They therefore cannot increase their disposable income at all while increasing their earnings by $110 per week. At least with the tapered rebate their disposable income is slightly higher over this range than it is currently.

The second proposal then appears to more successfully achieve its goal of reducing income disparities than the first suggestion examined, that of halving the standard rate of tax. As with the first proposal, however, the plan for a tapered rebate has unintended effects mainly in increasing work disincentives for low income earners. However, the drawbacks that are evident in the second proposal do not detract from the achievement of the primary objective to the extent that the proposal would make low income families worse off as would probably be the case if the reduced standard tax rate proposal was adopted.

ASSESSING THE FULL IMPACT OF PROPOSED CHANGES

Careful analysis of the full impact of various proposals for changes to the tax transfer system demonstrates the difficulty of achieving stated objectives. The simple device of halving the standard rate of tax, far from achieving its main purpose of improving the well-being of low income groups, generated greater benefits for higher income recipients. It would so reduce the revenues available to the government to provide needed services that again needy sectors of the community would be likely to suffer. Most alarming, of course, is the creation of poverty traps, where, by earning an extra dollar, a person actually receives less disposable income than before.

The other proposal examined, that of a tapered tax rebate, achieved its goal of improving vertical equity more successfully. It did so by being more directly targetted at the groups it was meant to assist, low income recipients. The proposal avoided major leakages of benefits to higher income groups by removing assistance at the level of about average earnings. The extent to which higher income groups received benefits depended upon the number of two-earner families affected. As the proposal focussed on individual taxpayers, more than one worker in a family would concentrate proportionately greater assistance in such households because of the existence of more than one tax threshold and rebate.

While the tapered rebate suggestion appeared to be more successfully redistributive than the 15 per cent standard tax rate proposal, it too suffered from the problem of increasing work disincentives to the extent that high effective marginal tax rates actually effect job-seekers labour market behaviour. It should be said that in addition to marginal tax rates many other factors influence the ability of people to find work including the specific nature of localised job markets, the availability of services such as transport and child care and not the least of course, the availability of jobs per se. Nevertheless, to the

to the extent that tax rates act as disincentives to finding paid work the tapered rebate proposal reduced such impediments over the lower levels of extra earnings so encouraging at least greater part-time work. At higher levels of income the taper rate of the rebate added 5 per cent to marginal tax rates.

Proposals to change the tax transfer system then must pay as much attention as possible to the unseen effects they may produce. As mentioned earlier most advocates of change seek to achieve more than just one main objective and realise that different means are necessary to achieve varying outcomes. Packages of proposals are therefore more common than the one catch-all solution. When such packages are constructed, however, even more attention must be paid to the multitude of effects thus produced. Especially difficult are suggestions that provide the same benefit to everybody in a particular category such as tax cuts across-the-board or the increase of family allowances.

For example, an across-the-board tax cut of approximately $A4 per week can be achieved by increasing the current tax threshold of $A4,595 per annum by $A700. While the absolute reduction in weekly tax is the same for all taxpayers, lower income recipients receive more benefit in the sense that $A4 represents a higher proportion of their disposable income than for higher income earners. However, not all low income households pay tax and therefore not all would receive the benefit of such a change. A taxpayer with a dependent spouse and children, for example, would receive no benefit if his/her income was less than $A8,028 per annum. Table 5 sets out

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the income levels of groups who would not benefit at all from an across-the-board tax cut. These groups include sole parents, single aged people and the unemployed. They are among the

lowest paid and most disadvantaged sector of the community. Further, such tax relief can result in increased social inequality by increasing the disposable incomes of taxpayers relative to the incomes of non-taxpayers. Revenues lost to government from such a change would be between $A1.25 and 1.4 billion. When the groups who would actually benefit in aggregate from the tax cuts are examined, it emerges that two-income families are the main beneficiaries while one-parent families, the aged and single people miss out disproportionately. While two income families with children represent 12.5 per cent of all family types in the community they would receive over 23 per cent of the aggregate tax savings. One-parent families would only receive 1.3 per cent of the benefits while comprising nearly 4 per cent of all households. As about 65 per cent of one-parent families have incomes too low to pay tax they would be perhaps the hardest hit group of all.

This example demonstrates the necessity to plan packages of changes that will affect both tax and social security aspects of the income transfer system. It also demonstrates the need to examine the actual impacts of proposed changes.

CONCLUSION

This paper has focussed on the tax transfer system as one area of social policy under intensive scrutiny as a result of changes in society and in families. It has sketched briefly some of the parameters of the debates being vigorously contested in Australia at present and some of the main value positions represented. It has also attempted to identify some of the pitfalls facing advocates of change. Many suggestions if implemented would produce outcomes quite contrary to those intended. Others would produce sufficient side-effects to negate or at least reduce the effectiveness of whatever gains were achieved. The paper recognizes that failing wholesale change to the system, modifications within existing structures must seek to balance conflicting objectives.

In order to counter unwanted side effects of various components of changes, numerous complimentary alterations must be enacted together. The paper proposes that as much should be done as is possible within the bounds of the analytic tools available to assess the actual outcomes, including those unintended effects that often go unforeseen.

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TABLE 1: Impact of change from 30% to 15% standard tax rate on single taxpayers. June 1984 rates.

Gross income $A per year	Tax payable under current arrangements. $A per week	Disposable income $A per week	Tax payable under proposed 15% standard tax rate $A p.w.	Tax cuts $A p.w.	% Tax cut	Increase in disposable income %
5 000	2.34	93.81	1.17	1.17	50	1.2
10 000	31.18	161.13	15.59	15.59	50	9.7
19 500	85.99	289.01	43.00	42.99	50	14.9
25 000	134.64	346.13	91.65	42.99	31.9	12.4
40 000	278.68	490.55	235.69	42.99	15.4	8.8

SOURCE: IFS AFIT Project

TABLE 2: Tax payable according to relationship between family income and average weekly earnings.

Family Income relate to AWE	Tax payable: Current rates $A million	Tax payable: 15% standard rate $A million	Reduction in tax tax paid $A million	Percentage reduction in tax paid
50%	660.6	322.8	337.8	51.1
50-100%	5401.8	2416.6	2985.2	55.3
100-150%	6064.7	3404.7	2660.0	43.9
150-200%	5012.5	3226.4	1786.1	35.6
200%	7218.6	5637.9	1580.1	21.9
TOTAL	**24358.0**	**15008.9**	**9349.1**	38.4

SOURCE: ABS Census of population and housing, 1981.

NB: 1981 Census figures are updated to 1983-84 values based on CPI movements between 1980-81 and December 1983.

TABLE 3: Impact of introduction of a tapered tax rebate for all low income recipients. June, 1984 rates

Earned Income $A (p.w.)	Pension/ Benefit $A p.w.	Tax payable under current arrangements $A p.w.	Effective marginal tax rate per cent	Tax payable with proposed tapered rebate $A p.w.	Increase in disposable income $A p.w.	New effective marginal tax rate per cent
1. Supporting parent with two children*						
0	121.40	0	0	0	0	0
50	117.40	0	50	0	0	50
60	112.40	0.61	65	0	0.61	50
90	97.40	5.11	65	0	5.11	50
120	82.40	9.61	65	3.61	6.00	65
300	0	51.49	31	47.74	3.75	36
500	0	133.49	46	133.49	0	47
2. Couple with two children*						
0	173.10	0	0	0	0	0
10	173.10	1.41	30	0	1.41	0
28	169.10	5.61	65	0	5.61	50
42	162.10	7.71	65	1.71	6.00	65
80	138.10	11.91	100	5.91	6.00	100
260	0	32.37	81	26.62	5.75	86
300	0	46.68	31	42.93	3.75	36
500	0	128.68	47	128.68	0	47

Source: IFS AFIT Project

* Note: It is assumed that pension or benefit is replaced by FIS when it is worth more.

TABLE 4: Tax payable according to relationship between family income and average weekly earnings (AWE): tapered tax rebate proposal compared with 1984 tax provisions.

Family income relative to AWE	Tax Payable		Reduction in tax paid	
	Current Rates* $A mill.	Tapered Rebate $A mill.	$A mill.	%
<50%	660.6	385.4	275.2	41.7
50-100%	5401.7	4787.6	614.1	11.4
100-150%	6064.7	5818.8	245.9	4.0
150-200%	5012.4	4872.4	140.0	2.8
200%+	7218.5	7151.2	67.3	0.9
TOTAL	24358.1	23015.4	1342.7	5.5

Source: ABS Census of population and housing, 1981

N.B. 1981 Census figures updated to 1983-84 values based on CPI movements between 1980-81 and December 1983

*IFS existing census program cannot incorporate the existing pensioner rebate. This tends to result in a slight overstatement (by about $36 million) of the aggregate tax payable under existing provisions and overstatement of the impact of the tapered rebate.

TABLE 5: Levels of taxable income needed to obtain part and full benefits from a tax cut of $A 4 per week.

Family Type	No Benefits if income below	Part Benefits if income below	Full Benefits if income below
	$ per annum	$ per annum	$ per annum
Single people	4595	5295	5295
Sole parents	7195	7895	7895
Taxpayer with dependent spouse	7362	8062	8062
Taxpayer with dependent spouse and dependent child	8028	8728	8728

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